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CONSTITUTIONAL LAW IN 1909-1910

THE CONSTITUTIONAL DECISIONS OF THE SUPREME COURT OF THE
UNITED STATES IN THE OCTOBER TERM, 1909¹

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It is indeed a substantial grist that the Supreme Court of the United States at the last term of court has ground for students of political science. The first opinion was delivered on November 1, 1909, and the last on May 31, 1910, and the court decided no less than sixty-five constitutional cases. Notice that with caution it is merely said that the court decided no less than that number; for it is often somewhat a matter of opinion whether a case should be classed as constitutional, and it may well be that there are readers who will find that the court exceeded sixty-five. And how were those sixty-five divided? Many turned on more constitutional points than one, and thus an enumeration of the cases bearing on the several clauses of the Constitution will reveal a total exceeding sixty-five. The enumeration, subject to amendment in accordance with each student's views, gives the following results: The Fourteenth Amendment, twenty-

¹ The REVIEW will publish annually in the November issue, a review of constitutional decisions of United States courts during the preceding year. In the other issues of the REVIEW similar articles will summarize the year's progress in international law and diplomacy, foreign constitutional law, and labor law.

four cases; the Commerce Clause, twenty-one; the Obligation of Contracts Clause, eight; whether cases arise "under the laws of the United States," eight; Full Faith and Credit Clause, five; and sixteen other clauses, from one to four cases each, aggregating twenty-seven.

Through these dull figures some important facts shine distinctly. The Fourteenth Amendment and the Commerce Clause clearly took a vast part of the court's energy, and each of these provisions has to do with the curtailment of functions which *prima facie* belong to the several states. In other words, the chief feature of this term, as of every recent term, has been a more or less successful attempt of litigants to overthrow state statutes as denials of due process and equal protection or as interferences with interstate commerce.

For purposes of reference it will be convenient for students of political science to have the recent cases arranged under the several clauses to which they pertain. Such an arrangement will now be presented with a brief indication of the pertinent doctrine of each case.

Art. I, sect. 1 ("All legislative Powers"):

Monongahela Bridge v. United States, 216 U. S. 177: Congress may delegate to the Secretary of War power to determine the existence of conditions rendering obstructions in navigable waters unreasonable. And as to this case see under Art. I, sect. 8, cl. 3; Art. III, sect. 1; and Amendment V.

Art. I, sect. 8, cl. 1 ("To lay and collect Taxes"):

North Dakota v. Hanson, 215 U. S. 515; The federal taxing power must not be clogged; and hence a state cannot compel holders of a federal license—at least when not actually conducting business under such license—to file and publish a copy.

Art. I, sect 8, cl. 3 ("To regulate Commerce"):

El Paso and Northeastern v. Gutierrez, 215 U. S. 87: Congressional power in territories does not depend on this clause; and hence the Employers' Liability Act of 1906 is valid there.

And as to this case see under Art. III, sect. 2, cl. 1; Art. IV, sect. 3, cl. 2, and Art. VI, cl. 2.

Interstate Commerce v. Illinois Central, 215 U. S. 452: Through the Interstate Commerce Commission there may be regulation of use of a carrier's cars meant for carriage of fuel for the carrier itself. *Interstate Commerce v. Chicago and Alton*, 215 U. S. 479: same point. And as to both cases see also under Art. III, sect. 1, and under Amendment V.

Baltimore and Ohio v. United States, 215 U. S. 481: In regulating distribution of coal cars, the Interstate Commerce Commission may take into account the shipper's own cars and also the carrier's cars intended for carriage of the carrier's own fuel.

Macon Grocery v. Atlantic Coast Line, 215 U. S. 501: Suit to restrain unlawful interstate freight rates comes under the Commerce Clause. And see under Art. III, sect. 2, cl. 1.

Western Union v. Kansas, 216 U. S. 1: A foreign corporation admitted to a state and engaged in interstate commerce may not be burdened in that state as to interstate business as a condition for doing local business. As to this case see also under Amendment XIV, sect. 1. *Pullman v. Kansas*, 216 U. S. 56 (as to which case see also under Amendment XIV, sect. 1), *Ludwig v. Western Union*, 216 U. S. 146 (as to which case see also under Amendment XI), and *Herndon v. C., R. I. and P.*, 218 U. S. 135 (as to which case see also below, under this same clause, and also under Art. III, sect. 2, cl. 1) under Amendment XI, and under Amendment XIV, sect. 1): same point.

Atlantic Coast Line v. Mazursky, 216 U. S. 122: In absence of federal legislation, a state may require an interstate carrier to settle within a certain time claims for damage to freight while in its possession within the state.

Monongahela Bridge v. United States, 216 U. S. 177: see under Art. I, sect. 1, Art. III, sect. 1, and Amendment V.

Missouri v. Kansas, 216 U. S. 262: Although a railway is engaged in interstate commerce, a state may regulate reasonably the part of the railway within its own boundaries, and, for example, may require passenger service between a point within

the state and the state line. As to this case, see also under Art. I, sect. 10, cl. 1, and Amendment XIV, sect. 1.

Interstate Commerce v. Northern Pacific, 216 U. S. 538: If Congress gives to the Interstate Commerce Commission power to establish a new joint rate when no reasonable and satisfactory through route exists, a court may inquire into the existence of such a route, and, in case there be such a one, will restrain the commission from establishing a new one, even though public convenience would be promoted by two routes.

International Textbook v. Pigg, 217 U. S. 91: The transmission of instruction by correspondence is commerce; and a foreign corporation wishing to engage in interstate commerce cannot be required by a state to obtain a license as a condition precedent. This seems to be the most important decision of the year. There was no argument made in favor of the state statute. There were two dissents. As to a state's liability to refuse entrance to a foreign corporation, if desirous of engaging in interstate commerce, the case follows *Crutcher v. Kentucky*, 141 U. S. 47 (1891). The doctrine as to this point has been doubted. See *Cooke on Commerce Clause*, §65.

St. Louis Southwestern v. Arkansas, 217 U. S. 136: A state may not require a railway with interstate lines to distribute its freight cars in such a way as to burden its interstate business.

Davis v. C., C. and St. L., 217 U. S. 157: A state court may obtain jurisdiction over a foreign corporation by attaching its cars, even though they are engaged in interstate commerce; and this is true notwithstanding the Interstate Commerce Act's provisions for through routes and for continuity of transportation.

Standard Oil v. Tennessee, 217 U. S. 413: A state may punish a foreign corporation engaged in interstate commerce for inducing a merchant in the state to revoke orders for goods to be shipped from another state by a competitor of the corporation. As to this case see also under Amendment XIV, sect. 1.

Southern Railway v. King, 217 U. S. 524: A state may require a railway to slacken the speed of trains at a crossing, even though the trains be engaged in interstate business, unless it be alleged

and shown clearly that to slacken speed at the crossing in question would burden interstate commerce unreasonably.

Chiles v. Chesapeake and Ohio, 218 U. S. 71: In the absence of federal statute, a railway may require colored and white passengers on interstate trains to occupy separate but equivalent compartments. It should be noticed that the regulation was by the railway, and not by the state.

Dozier v. Alabama, 218 U. S. 124: A state may not impose a tax on persons not having a permanent place of business in the state, as a license fee for soliciting orders for picture frames or for selling them; and this rule is applicable where the principal transaction does not include the sale of a frame, but simply adds to the sale of a picture an option to take the frame also at a certain price, the frame coming from outside the state and being delivered within the state.

Herndon v. C., R. I. and P., 218 U. S. 135: A state may not require a railway to stop interstate trains at junction points already provided with adequate service. As to this case see also above under this same clause and also under Art. III, sect. 2, cl. 1, Amendment XI, and Amendment XIV, sect. 1.

Art. I, sect. 1, cl. 4 ("*An uniform Rule of Naturalization*"):

Helmgren v. United States, 217 U. S. 509: Congress may authorize state courts to admit aliens to citizenship, and may cause perjury in such proceedings to be punishable in federal courts.

Art. I, sect. 8, cl. 14 ("*Regulation of the Land and Naval Forces*"):

Franklin v. United States, 216 U. S. 559: Congress may provide that crimes committed in places ceded by states shall be punished in the federal courts in such manner as is provided in the laws of such states in force at the passage of such federal statute.

Art. I, sect. 10, cl. 1 ("*Impairing the Obligation of Contracts*"):

Louisiana v. Mayor of New Orleans, 215 U. S. 170: Notwithstanding a state statute, a municipality retains such power and duty to levy taxes as existed when an indebtedness accrued; and mandamus is a remedy to compel a city council to levy a tax.

Henley v. Myers, 215 U. S. 373: The state creating a corporation may require afterwards that statements of transfers of stock must be filed with the secretary of the state.

Minneapolis v. Minneapolis Street Railway, 215 U. S. 417: A street railway's fifty year franchise from city and state to charge five cent fare cannot be modified by ordinance.

Great Northern v. Minnesota, 216 U. S. 206: An exemption from taxation is not inferred from doubtful language; and an exemption in defiance of a state constitution will not be enforced.

Chicago Great Western v. Minnesota, 216 U. S. 234: In the absence of clear language, a railway's legislative exemption from taxation is personal and cannot be transferred to a purchaser of its franchises.

Missouri Pacific v. Kansas, 216 U. S. 262: If a state reserves power to alter a railway charter, such alteration may be effected indirectly by conferring powers on a railway commission. As to this case, see also under Art. I, sect. 8, cl. 3, and Amendment XIV, sect. 1.

Wright v. Georgia Railroad, 216 U. S. 420: If a charter exempts a railway from taxation on its stock, this means exemption of its property, and among other things of its franchise; and if another railway is chartered to exercise all the powers and privileges conferred on the first, the property of the second railway enjoys no exemption, even after the two companies have been consolidated.

Citizens National v. Kentucky, 217 U. S. 443: Earlier decisions have settled that the Kentucky law as to taxing national bank shares does not impair a supposed contract in the Kentucky bank act. As to this case see also under Amendment XIV, sect. 1.

Art. II, sect. 1, cl. 1 ("The executive Power"):

Ballinger v. United States, 216 U. S. 240: Mandamus lies against the Secretary of the Interior in case he refuses to perform a purely ministerial duty. And see under Art. III, sect. 2, cl. 1.

Central Trust v. Central Trust, 216 U. S. 251: Findings of fact by executive officers are conclusive in the absence of palpable error.

Art. III, sect. 1 ("The judicial Power"):

Interstate Commerce v. Illinois Central, 215 U. S. 452: Judicial power does not extend to regulating administrative functions of the Interstate Commerce Commission by overthrowing orders on the ground of their being inexpedient. *Interstate Commerce v. Chicago and Alton*, 215 U. S. 479: same point. And for both cases see also under Art. I, sect. 8, cl. 3, and Amendment V.

Monongahela Bridge v. United States, 216 U. S. 177: see under Art. I, sect. 1, Art. I, sect. 8, cl. 3, and Amendment V.

Art. III, sect. 2, cl. 1 ("Cases . . . under . . . the Laws of the United States"):

El Paso and Northeastern v. Gutierrez, 215 U. S. 87: Territorial statutes come within this provision. And as to this case see under Art. I, sect. 8, cl. 3; Art. IV, sect. 3, cl. 2, and Art. VI, cl. 2.

Kenney v. Craven, 215 U. S. 125: No federal question is involved when a state court holds that a purchaser from a trustee in bankruptcy is charged with notice of a pending suit brought in a state court by the trustee.

Macon Grocery v. Atlantic Coast Line, 215 U. S. 501: see under Art. I, sect. 8, cl. 3.

Cincinnati, New Orleans and Texas Pacific v. Slade, 216 U. S. 78: Appellate jurisdiction over a state court requires that a federal question be raised there and passed upon there.

Ballinger v. United States, 216 U. S. 240: see under Art. II, sect. 1, cl. 1.

Los Angeles Farming v. Los Angeles, 217 U. S. 217: The Act of March 3, 1851, confirming as against the United States the titles to land in California derived under Spanish or Mexican law, does not create titles; and hence claims based on Spanish or Mexican law are not claims under a statute of the United States.

Herndon v. C., R. I. and P., 218 U. S. 135: The right to resort to the federal courts may not be denied to a foreign corporation by a state which has already licensed that corporation to do business. *Roach v. A., T. and S. F.*, 218 U. S. 159: same point.

And as to the former case, see also in two places under Art. I, sect. 8, cl. 3, and also under Amendment XI.

Art. III, sect. 2, cl. 2 ("Appellate Jurisdiction"):

Baltimore and Ohio v. Interstate Commerce, 215 U. S. 216: Appellate jurisdiction requires the case to be determined by the inferior court, and does not permit certification of the whole case before judgment. Southern Pacific v. Interstate Commerce, 215 U. S. 226: same point.

Art. IV, sect. 1 ("Full Faith and Credit"):

Fall v. Eastin, 215 U. S. 1: A decree need not be recognized as passing title to property that is outside the jurisdiction.

Everett v. Everett, 215 U. S. 203: If the fact in issue in a suit for separate maintenance be existence of marriage, a decree against the petitioner requires courts of other states to recognize that no marriage existed.

Olmsted v. Olmsted, 216 U. S. 386: A state statute legitimizing children cannot affect rights already vested as to lands in another state.

Sistare v. Sistare, 218 U. S. 1: Judgments for future alimony, unless subject to discretionary modification, are protected by this clause.

Louisville and Nashville v. Melton, 218 U. S. 36: A settled construction of a state statute, if relied on as a basis for the Full Faith and Credit Clause, must be clearly brought to the attention of the state court which is asked to enforce that construction; and the normal method is by pleading and proof. As to this case, see also under Amendment XIV, sect. 1.

Art. IV, sect. 3, cl. 2 ("The Territory . . . belonging to the United States"):

El Paso and Northeastern v. Gutierrez, 215 U. S. 87: Congressional power over the territories does not depend on the commerce clause; and an act of Congress supersedes a territorial statute. And as to this case see under Art. I, sect. 8, cl. 3, Art. III, sect. 2, cl. 1, and Art. VI, cl. 2.

Art. VI, cl. 2 ("This Constitution, and the Laws of the United States which shall be made in Pursuance thereof"):

El Paso and Northeastern v. Gutierrez, 215 U. S. 87: The constitutional part of a severable statute must be applied. And as to this case see also under Art. I, sect. 8, cl. 3, Art. III, sect. 2, cl. 1, and Art. IV, sect. 3, cl. 2.

Art. VI, cl. 2 ("And all Treaties"):

Sanchez v. United States, 216 U. S. 167: A treaty is superseded by a later act of Congress inconsistent with it. And as to this case see under Amendment V, two provisions.

Amendment V ("Twice put in jeopardy"):

Brantley v. Georgia, 217 U. S. 284: This provision does not prevent a state court from trying for murder a person who, after being indicted for murder and merely convicted of manslaughter, has sought and obtained a new trial.

Amendment V ("Life, liberty, or property"):

Interstate Commerce v. Illinois Central, 215 U. S. 452; and *Interstate Commerce v. Chicago and Alton*, 215 U. S. 479; see under Art. I, sect. 8, cl. 3, and Art. III, sect. 1.

Sanchez v. United States, 216 U. S. 167: This provision does not prevent the abolition in Porto Rico of a perpetual and salable office which under Spanish law had been treated as property. And as to this case see also under Art. VI, cl. 2, and under Amendment V in the next paragraph.

Amendment V ("Private property be taken"):

Sanchez v. United States, 216 U. S. 167: See under preceding provision of Amendment V, and as to this case see also under Art. VI, cl. 2.

Monongahela Bridge v. United States, 216 U. S. 177: Even though Congress by silence has not prevented the erecting of obstructions in navigable waters, Congress later may require the removal of such obstructions without compensation. As to this case see also under Art. I, sect. 1, Art. I, sect. 8, cl. 3, and Art. III, sect. 1.

United States v. Welch, 217 U. S. 333: The United States must pay for an easement which it destroys in making a public improvement; and the value of this easement cannot be ascertained without reference to the dominant estate.

Amendment VIII ("Cruel and unusual punishments"):

Weems v. United States, 217 U. S. 349: In the Philippine Bill of Rights, the prohibition of cruel and unusual punishments means the same as in this provision; and there is cruel and unusual punishment, when, in accordance with the Penal Code carried over from the time of Spanish domination, the making of false entries leads to a sentence of fine, imprisonment in chains and at hard and painful labor for fifteen years, permanent disqualification for office and suffrage, and perpetual subjection to surveillance. This case contains the earliest extended discussion of cruel and unusual punishments.

Amendment XI ("Suit . . . against one of the United States"):

Ludwig v. Western Union, 216 U. S. 146: Notwithstanding this provision, an injunction may be obtained against a state official to prevent enforcement of a statute invalid under the Constitution of the United States. Herndon v. C., R. I. and P., 218 U. S. 135: same point. As to these cases, see also under Art. I, sect. 8, cl. 3; and as to the latter of them see also under Art. III, sect. 2, cl. 1, and Amendment XIV, sect. 1.

Amendment XIV, sect. 1 ("Deprive . . . of life, liberty, or property, without due process of law; nor deny . . . the equal protection of the laws"):

Western Union v. Kansas, 216 U. S. 1, see under Art. I, sect. 8, cl. 3. Pullman v. Kansas, 216 U. S. 56: same point; and see same place.

King v. West Virginia, 216 U. S. 92: By earlier decisions it has been settled that a state may cause forfeiture of land for failure in five successive years to list it for taxation; and if by state procedure a decree can be re-opened, such a re-opening is

not a deprivation of right without due process. See below, *Fogg v. Crozer*, 217 U. S. 455.

Missouri Pacific v. Kansas, 216 U. S. 262: A railway is not deprived of property by being regulated reasonably, nor by being compelled to perform its duty, even though loss results. As to this case, see also under Art. I, sect. 8, cl. 3, and Art. I, sect. 10, cl. 1.

Laurel Hill v. San Francisco, 216 U. S. 358: An ordinance dictated by considerations of public health will be upheld when public opinion is divided as to the dangerousness of the prohibited use of property.

Southern Railway v. Greene, 216 U. S. 400: A corporation is a person; and a foreign corporation which has been permitted to enter a state cannot thereafter, for the privilege of continuing interstate business, be taxed more heavily than similar domestic corporations. *Louisville and Nashville v. Gaston*, 216 U. S. 418: same point.

Board of Assessors v. New York Life, 216 U. S. 517: A life insurance company cannot be taxed on its advance payments of policy reserves; and in the absence of clear language a state will not be understood as attempting to tax a bank deposit which is created with the purpose of being immediately withdrawn from the state.

Williams v. Arkansas, 217 U. S. 79: A state may prohibit the soliciting of business on trains by representatives of hotels, baths, and medical practitioners.

Southwestern Oil v. Texas, 217 U. S. 114: A state may impose an occupation tax on wholesale dealers in certain articles, without imposing a similar tax on other wholesale dealers; and even a provision of unreasonably severe penalties will not cause the whole statute to be overthrown, in case the state does not ask the penalties, or in case this provision is severable.

Boston Chamber of Commerce v. Boston, 217 U. S. 189: When land subject to an easement is taken by eminent domain, due process of law does not require that the various parties in interest, including owners of easements, should have damages assured just as if the whole property, including easements, belonged to one owner.

Missouri v. Nebraska, 217 U. S. 196: A state cannot compel a railway to furnish switches at its own expense on request of every elevator.

Standard Oil v. Tennessee, 217 U. S. 413: A state may punish a corporation by ouster and through equity procedure, while a natural person would be punishable for the same offense by fine and imprisonment and through common law procedure. As to this case see also under Art. I, sect. 8, cl. 3.

Grenada Lumber v. Mississippi, 217 U. S. 433: A state may prevent combinations in restraint of trade, and hence may dissolve an association of retail dealers who agree not to purchase from such wholesale dealers as sell directly to consumers.

Citizens National v. Kentucky, 217 U. S. 443: If a statute requires stockholders, and in their default the corporation, to list shares for taxation, a later statute may require the corporation to pay in behalf of its stockholders a penalty for past failures so to do, this being simply a new remedy. As to this case, see also under Art. I, sect. 10, cl. 1.

Fogg v. Crozer, 217 U. S. 455: A state may cause forfeiture of lands for five years' non-payment of taxes. See above *King v. West Virginia*, 216 U. S. 92.

Kidd v. Musselman, 217 U. S. 461: A state may enact that sales by retail or wholesale merchants of their whole stock, or of part of their stock otherwise than in the ordinary course of business, shall be voidable as against creditors unless prior notice be given to them and an inventory be made.

Brown-Forman v. Kentucky, 217 U. S. 563: A state may exact an occupation tax of so much a gallon on domestic rectifiers of distilled spirits, though not similarly burdening distillers; for the classification is not arbitrary, there being a distinction between rectifiers and distillers, and there being no possibility of exacting an occupation tax from rectifiers outside the state.

Louisville and Nashville v. Melton, 218 U. S. 36: A state may abolish the fellow-servant rule as to railways, and may include carpenters among the railway servants as to whom the rule is abolished; for the classification is not arbitrary. As to this case see also under Amendment IV, sect. 1.

Shevlin-Carpenter v. Minnesota, 218 U. S. 57: A state may punish with double damages, fine, and imprisonment the involuntary cutting of timber on state lands; and *quaere* whether the Fourteenth Amendment prohibits double jeopardy.

Herndon v. C., R. I. and P., 218 U. S. 135: A state which has licensed a foreign corporation may not thereafter enact that a resort to federal courts shall cause the license to be forfeited. As to this case see also in two places under Art. I, sect. 8, cl. 3, and also under Art. III, sect. 2, cl. 1, and Amendment XI. *Roach v. A., T. and S. F.*, 218 U. S. 159 (as to which case, see also under Art. III, sect. 2, cl. 1): same point.

Franklin v. South Carolina, 218 U. S. 161: In the absence of proof that negroes are ineligible for the grand jury or are actually excluded from it on account of race, a negro cannot complain that the grand jury indicting him contained no negro; and jury commissioners may properly have power to select jurors of good moral character, whom they deem qualified to serve as jurors, competent negroes being eligible; and refusal to grant a continuance is not, except in some extreme case, denial of due process; and a person on trial for murder is not entitled to a peremptory instruction for acquittal in case he has shown that the person killed was attempting to serve on him a warrant issued under an unconstitutional statute.

Watts v. Maryland, 218 U. S. 173: If a statute provides, as construed by the state court, that a person practicing medicine without registration shall be convicted whether a notice of the necessity of registration has been sent to him or not, a person convicted without having been furnished with such a notice is not deprived of due process; and a medical registration law may properly except persons practicing before a certain date and persons practicing gratuitously and persons practicing in hospitals, as such exceptions are not unreasonable.

From the preceding memoranda it will be easy for the reader to select the cases bearing on any topic in which he is peculiarly interested.

For example, on taxation—following the order in which the

cases occur in the foregoing arrangement—we have: *North Dakota v. Hanson*, 215 U. S. 515; *Western Union v. Kansas*, 216 U. S. 1; *Pullman v. Kansas*, 216 U. S. 56; *Ludwig v. Western Union*, 216 U. S. 146; *Herndon v. C., R. I. and P.*, 218 U. S. 135; *International Textbook v. Pigg*, 217 U. S. 91; *Dozier v. Alabama*, 218 U. S. 124; *Louisiana v. Mayor of New Orleans*, 215 U. S. 170; *Chicago Great Western v. Minnesota*, 216 U. S. 234; *Wright v. Georgia Railroad*, 216 U. S. 420; *Citizens National v. Kentucky*, 217 U. S. 443; *King v. West Virginia*, 216 U. S. 92; *Southern Pacific v. Greene*, 216 U. S. 400; *Louisville and Nashville v. Gaston*, 216 U. S. 418; *Board of Assessors v. New York Life*, 216 U. S. 517; *Southwestern Oil v. Texas*, 217 U. S. 114; *Fay v. Crozer*, 217 U. S. 455; *Brown-Forman v. Kentucky*, 217 U. S. 563—a total of eighteen cases, indicating how large is the power of federal courts—especially under the Fourteenth Amendment, the Commerce Clause, and the Obligation of Contracts Clause, as to state taxation.

Again, on police power we have: *North Dakota v. Hanson*, 215 U. S. 515; *Laurel Hill v. San Francisco*, 216 U. S. 358; *Williams v. Arkansas*, 217 U. S. 79; *Kidd v. Musselman*, 217 U. S. 461; *Brown-Forman v. Kentucky*, 217 U. S. 63; *Louisville and Nashville v. Melton*, 218 U. S. 36; *Shevlin-Carpenter v. Minnesota*, 218 U. S. 57; and *Watson v. Maryland*, 218 U. S. 173—a total of eight cases, seven of them being under the Fourteenth Amendment.

Although, as has been indicated, the constitutional cases in the 1909 term were in the aggregate a rather large number, it cannot be said that they were very noteworthy in importance. The court was depleted by sickness and death, and consequently it was deemed advisable to postpone the decision of several cases which are of deep interest to the public and which may establish doctrines of great consequence to students of political science. The most important decision was, it would seem, that in *International Textbook v. Pigg*, under the Commerce Clause. If the doctrine followed in that case be not limited, a state will have practically no power to deny admission to a corporation desiring to engage in interstate commerce, and not even the power

to insist that this foreign corporation shall submit to the same regulations as are applied to domestic corporations engaged in the same business. The practical result, it seems, must be either (1) national legislation placing foreign interstate commerce corporations under the control, to some extent, of the several states—in short, legislation resembling the Wilson Act as to original packages—or (2) national licensing of corporations organized in this country or abroad for the purpose of engaging in interstate or foreign commerce, or (3) national incorporation.

THE UNION OF SOUTH AFRICA

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On May 31, 1910, the Union of South Africa became an accomplished fact. The four provinces of Cape Colony, Natal, the Orange Free State (which bears again its old time name) and the Transvaal are henceforth joined, one might almost say amalgamated, under a single government. They will bear to the central government of the British empire the same relation as the other self-governing colonies—Canada, Newfoundland, Australia and New Zealand. The Empire will thus assume the appearance of a central nucleus with four outlying parts corresponding to geographical and racial divisions, and forming in all a ground plan that seems to invite a renewal of the efforts of the Imperial Federationist. To the scientific student of government the Union of South Africa is chiefly of interest for the sharp contrast it offers to the federal structure of the American, Canadian and other systems of similar historical ground. It represents a reversion from the idea of State rights, and balanced indestructible powers and an attempt at organic union by which the constituent parts are to be more and more merged in the consolidated political unit which they combine to form.

But the Union and its making are of great interest also for the general student of politics and history, concerned rather with the development of a nationality than with the niceties of constitutional law. From this point of view the Union comes as the close of a century of strife, as the aftermath of a great war, and indicates the consummation, for the first time in history, of what appears as a solid basis of harmony between the two races in South Africa. In one shape or other union has always been the goal of South African aspiration. It was 'Union' which the

“prancing proconsuls” of an earlier time—the Freres, the Shepstone’s and the Lanyons—tried to force upon the Dutch. A united Africa was at once the dream of a Rhodes and (perhaps) the ambition of a Kruger. It is necessary to appreciate the strength of this desire for union on the part of both races and the intense South African patriotism in which it rests in order to understand how the different sections and races of a country so recently locked in the death struggle of a three years’ war could be brought so rapidly into harmonious concert.

The point is well illustrated by looking at the composition of the Convention, which, in its sessions at Durban, Cape Town and Bloemfontein, put together the present constitution. South Africa, from its troubled history, has proved itself a land of strong men. But it was reserved for the recent convention to bring together within the compass of a single council room the surviving leaders of the period of conflict to work together for the making of a united state. In looking over the list of them and reflecting on the part that they played towards one another in the past, one realizes that we have here a grim irony of history. Among them is General Louis Botha, Prime Minister at the moment of the Transvaal, and now the first prime minister of South Africa. Botha, in the days of General Buller and the Dugela, was the hardest fighter of the Boer republic. Beside him in the convention was Dr. Jameson, whom Botha wanted to hang after the raid in 1896. Another member is Sir George Farrar, who was sentenced to death for complicity in the raid, and still another, Sir Percy Fitzpatrick, once the secretary of the Reform League at Johannesburg and well known as the author of the “Transvaal from Within.” One may mention in contrast General Jan Smuts, an ex-leader of the Boer forces, and since the war the organizing brain of the Het Volk party. There is also Mr. Merriman, a leader of the British party of opposition to the war in 1899 and since then a bitter enemy of Lord Milner and the new régime.

Yet strangely enough after some four months of session the convention accomplished the impossible by framing a constitution that met the approval of the united delegates. Of its proceedings no official journal was kept. The convention met first

at Durban, October 12, 1908, where it remained throughout that month; after a fortnight's interval it met again at Capetown, and with a three weeks' interruption at Christmas continued and completed its work at the end of the first week of February. The constitution was then laid before the different colonial parliaments. In the Transvaal its acceptance was a matter of course, as the delegates of both parties had reached an agreement on its terms. The Cape Parliament passed amendments which involved giving up the scheme of proportional representation as adopted by the convention. Similar amendments were offered by the Orange River Colony in which the Dutch leader sympathized with the leader of the Afrikanderbond at the Cape in desiring to swamp out, rather than represent, minorities. In Natal, which as an ultra-British and ultra-loyal colony, was generally supposed to be in fear of union, many amendments were offered. The convention then met again at Bloemfontein, made certain changes in the draft of the constitution and again submitted the document to the colonies. This time it was accepted. Only in Natal was it thought necessary to take a popular vote, and here, contrary to expectation, the people voted heavily in favor of union. The logic of the situation compelled it. In the history of the movement Natal was cast for the same rôle as Rhode Island in the making of the Federal Union of the United States of America. The other colonies once brought together into a single system, with power to adopt arrangements in their own interests in regard to customs duties and transportation rates, sheer economic pressure would have compelled the adhesion of Natal. In the constitution now put in force in South Africa the central point of importance is that it establishes what is practically a unitary and not a federal government. The underlying reason for this is found in the economic circumstances of the country and in the situation in which the provinces found themselves during the years after the war. Till that event the discord of South Africa was generally thought of rather as a matter of racial rivalry and conflicting sovereignties than of simple questions of economic and material interests.

But after the conclusion of the compact of Vereininging in 1902

it was found that many of the jealousies and difficulties of the respective communities had survived the war, and rested rather upon economic considerations than racial rivalries.

To begin with, there was the question of customs relations. The colonies were separate units, each jealous of its own industrial prosperity. Each had the right to make its own tariff, and yet the division of the country, with four different tariff areas, was obviously to its general disadvantage. Since 1903 the provinces had been held together under the Customs Union of South Africa—made by the governments of the Cape and Natal and the Crown Colony governments of the conquered provinces. This was but a makeshift arrangement, with a common tariff made by treaty, and hence rigidly unalterable, and with a pro rata division of the proceeds.

Worse still was the railroad problem, which has been in South Africa a bone of contention ever since the opening of the mines of the Rand offered a rich prize to any port and railway that could capture the transit trade.

The essence of the situation is simple. The centre of the wealth of South Africa is the Johannesburg mines. This may not be forever the case, but in the present undeveloped state of agriculture and industrial life, Johannesburg is the dominating factor of the country.

Now, Johannesburg cannot feed and supply itself. It is too busy. Its one export is gold. Its quarter of a million people must be supplied from the outside. But the Transvaal is an inland country dependent on the sea ports of other communities. In position Johannesburg is like the hub of a wheel from which the railways radiate as spokes to the seaports along the rim. The line from Cape Town to Johannesburg, a distance of over 700 miles, was the first completed, and until 1894 the Cape enjoyed a monopoly of carrying the whole trade of Johannesburg. But with the completion of the tunnel through the mountains at Laing's Nek the Natal government railway was able to connect with Johannesburg and the port of Durban entered into competition with the Cape Ports of Cape Town and East London over a line only 485 miles long.

Finally, the opening of the Delagoa Bay Railway in 1894 supplied Johannesburg with an access to the sea over a line 396 miles long, of which 341 was in the Transvaal itself. This last line, it should be noticed, led to a Portuguese seaport, and at the time of its building traversed nowhere British territory. Hence it came about that in the all-important matter of railroad communication the interests of the Transvaal and of the seaboard colonies were diametrically opposed.

To earn as large a revenue as possible it naturally adjusted the rates on its lines so as to penalize the freight from the colonies and favor the Delagoa Bay road. When the colonies tried in 1895 to haul freight by ox-team from their rail-head at the frontier to Johannesburg President Kruger "closed the drifts" and almost precipitated a conflict in arms. Since the war the same situation has persisted, aggravated by the completion of the harbor works and docks at Lorenzo Marques, which favors more than ever the Delagoa route. The Portuguese seaport at present receives some 67 per cent of the traffic from the Rand, while the Cape ports, which in 1894 had 80 per cent of the freight, now receive only 11 per cent.

Under Lord Milner's government the unification of the railways of the Transvaal and the Orange River colony with the Central South African Railways amalgamated the interests of the inland colonies, but left them still opposed to those of the seaboard. The impossibility of harmonizing the situation under existing political conditions has been one of the most potent forces in creating a united government which alone could deal with the question.

An equally important factor has been the standing problem of the native races, which forms the background of South African politics. In no civilized country is this question of such urgency. South Africa, with a white population of only 1,133,000 people, contains nearly 7,000,000 native and colored inhabitants, many of them such as the Zulus and the Basutos, fierce, warlike tribes scarcely affected by European civilization, and wanting only arms and organization to offer a grave menace to the welfare of the white population. The Zulus, numbering a million, inhabiting

a country of swamp and jungle impenetrable to European troops, have not forgotten the prowess of a Cetewayo and the victory of Isandhwana.

It may well be that some day they will try the fortune of one more general revolt before accepting the permanent overlordship of their conquerors. Natal lives in apprehension of such a day. Throughout all South Africa, among both British and Dutch, there is a feeling that Great Britain knows nothing of the native question.

The British people see the native through the softly-tinted spectacles of Exeter Hall. When they have given him a Bible and a breech-cloth they fondly fancy that he has become one of themselves, and urge that he shall enter upon his political rights. They do not know that to a savage, or a half-civilized black, a ballot box and a voting paper is about as comprehensible as a telescope or a pocket camera—it is just a part of the white man's magic, containing some particular kind of devil of its own. The South Africans think that they understand the native. And the first tenet of their gospel is that he must be kept in his place. They have seen the hideous tortures and mutilations inflicted in every native war. If the native revolts they mean to shoot him into marmalade with machine guns. Such is their simple creed. And in this matter they want nothing of what Mr. Merriman recently called the "damnable interference" of the mother country. But to handle the native question there had to be created a single South African Government, competent to deal with it.

The constitution creates for South Africa a union entirely different from that of the provinces of Canada or the states of the American republic. The government is not federal, but unitary. The provinces become areas of local governments, with local elected councils to administer them, but the South African parliament reigns supreme. It is to know nothing of the nice division of jurisdiction set up by the American constitution and by the British North America Act. There are of course, limits to its power. In the strict sense of legal theory, the omnipotence of the British Parliament, as in the case of Canada, remains unimpaired. Nor can it alter certain things,—for example, the native franchise

of the Cape, and the equal status of the two languages,—without a special majority vote. But in all the ordinary conduct of trade, industry and economic life, its power is unhampered by constitutional limitations.

The constitution sets up as the government of South Africa a legislature of two houses—a Senate and a House of Assembly—and with it an executive of ministers on the customary tenure of cabinet government. This government, strangely enough, is to inhabit two capitals: Pretoria as the seat of the Executive Government and Cape Town as the meeting place of the Parliament. The experiment is a novel one. The case of Simla and Calcutta, in each of which the Indian government does its business, and on the strength of which Lord Curzon has defended the South African plan, offers no real parallel. The truth is that in South Africa, as in Australia, it proved impossible to decide between the claims of rival cities. Cape Town is the mother city of South Africa. Pretoria may boast the memories of the fallen republic, and its old-time position as the capital of an independent state. Bloemfontein has the advantage of a central position, and even garish Johannesburg might claim the privilege of the money power. The present arrangement stands as a temporary compromise to be altered later at the will of the parliament.

The making of the Senate demanded the gravest thought. It was desired to avoid if possible the drowsy nullity of the Canadian Upper House and the preponderating “bossiness” of the American. Nor did the example of Australia, where the Senate, elected on a “general ticket” over huge provincial areas, becomes thereby a sort of National Labor Convention, give any assistance in a positive direction. The plan adopted is to cause each present provincial parliament, and later each provincial council, to elect eight senators. The plan of election is by proportional representation, into the arithmetical juggle of which it is impossible here to enter. Eight more senators will be appointed by the Governor, making forty in all. Proportional representation was applied also in the first draft of the constitution to the election of the Assembly.

It was thought that such a plan would allow for the represen-

tation of minorities, so that both Dutch and British delegates would be returned from all parts of the country. Unhappily, the Afrikanderbond—the powerful political organization supporting Mr. Merriman, and holding the bulk of the Dutch vote at the Cape—took fright at the proposal. Even Merriman and his colleagues had to vote it down.

Without this they could not have saved the principle of “equal rights,” which means the more or less equal (proportionate) representation of town and country. The towns are British and the country Dutch, so the bearing of equal rights is obvious. Proportional representation and equal rights were in the end squared off against one another.

South Africa will retain duality of language, both Dutch and British being in official use. There was no other method open. The Dutch language is probably doomed to extinction within three or four generations. It is in truth not one linguistic form, but several: the Taal or kitchen Dutch of daily speech, the “*lingua franca*” of South Africa; the School Taal, a modified form of it, and the High Dutch of the scriptural translations brought with the Boers from Holland. Behind this there is no national literature, and the current Dutch of Holland and its books varies some from all of them. English is already the language of commerce and convenience. The only way to keep Dutch alive is to oppose its use. Already the bitterness of the war has had this effect, and language societies are doing their best to uphold and extend the use of the ancestral language.

It is with a full knowledge of this that the leaders of the British parties acquiesced in the principle of duality.

The native franchise was another difficult question. At present neither natives nor “colored men” (the South African term for men of mixed blood), can vote in the Transvaal, the Orange River and Natal. Nor is there the faintest possibility of the suffrage being extended to them, both the Dutch and the British being convinced that such a policy is a mistake. In the Cape natives and colored men, if possessed of the necessary property and able to write their names are allowed to vote. The name writing is said to be a farce, the native drawing a picture of his name under

guidance of his political boss. Some 20,000 natives and colored people thus vote at the Cape and neither the Progressives nor the Bond party dared to oppose the continuance of the franchise, lest the native vote should be thrown solid against them. As a result each province will retain its own suffrage, at least, until the South African Parliament by a special majority of two-thirds in a joint session shall decide otherwise.

The future conformation of parties under the union is difficult to forecast. At present the Dutch parties—they may be called so for lack of a better word—have large majorities everywhere except in Natal. In the Transvaal General Botha's party—Het Volk, the Party of the People—is greatly in the ascendant. But it must be remembered that Het Volk numbers many British adherents. For instance, Mr. Hull, Botha's treasurer, in the outgoing government, is an old Johannesburg "reformer," of the Uitlander days, and fought against the Boers in the war. In the Orange Free State the party called the Unie (or United Party) has a large majority while at the Cape Dr. Jamieson's party of progressives can make no stand against Mr. Merriman, Mr. Malan, Mr. Sauer, and the powerful organization of the Afrikanerbond.

How the new government will be formed it is impossible to say. Botha and Merriman will, of course, constitute its leading factors. But whether they will attempt a coalition by taking in with them such men as Sir Percy Fitzpatrick and Dr. Jamieson, or will prefer a more united and less universal support is still a matter of conjecture. From the outsider's point of view, a coalition of British and Dutch leaders, working together for the future welfare of a common country, would seem an auspicious opening for the new era. But it must be remembered that General Botha is under no necessity whatever to form such a coalition. If he so wishes he can easily rule the country without it as far as a parliamentary majority goes. Not long since an illustrious South African, a visitor to Montreal, voiced the opinion that Botha's party will rule South Africa for twenty years undisturbed. But it is impossible to do more than conjecture what will happen. *Ex Africa semper quid novi.*

Most important of all is the altered relation in which South Africa will now stand to the British Empire.

The Imperial government may now be said to evacuate South Africa, and to leave it to the control of its own people. It is true that for the time being the Imperial government will continue to control the native protectorates of Basutoland, Bechuanaland and Swaziland. But the Constitution provides for the future transfer of these to the administration of a commission appointed by the colonial government. Provision is also made for the future inclusion of Rhodesia within the Union. South Africa will therefore find itself on practically the same footing as Canada or Australia within the British Empire. What its future fate there will be no man can yet foretell. In South Africa, as in the other Dominions, an intense feeling of local patriotism and "colonial nationalism" will be matched against the historic force and the practical advantages of the Imperial connection. Even in Canada, there is no use in denying it, there are powerful forces which, if unchecked, would carry us to an ultimate independence. Still more is this the case in South Africa.

It is a land of bitter memories. The little people that fought for their republics against a world in arms have not so soon forgotten. It is idle for us in the other parts of the Empire to suppose that the bitter memory of the conflict has yet passed, that the Dutch have forgotten the independence for which they fought, the Vier Klur flag that is hidden in their garrets still, and the twenty thousand women and children that lie buried in South Africa as the harvest of the conqueror. If South Africa is to stay in the Empire it will have to be because the Empire will be made such that neither South Africa nor any other of the dominions would wish to leave it. For this, much has already been done. The liberation of the Transvaal and Orange River from the thralldom of their Crown Colony government, and the frank acceptance of the Union Constitution by the British government are the first steps in this direction. Meantime that future of South Africa, as of all the Empire, lies behind a veil.

CAUSES OF THE LACK OF POLITICAL COHESION IN SPANISH AMERICA

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The most serious criticism which we can lay at the door of the Spanish American to-day is his lack of political cohesion. The border provinces are everlastingly rebelling against the decrees of the central government. One hundred years ago, when the Spanish colonies began to secure their independence, they either did not combine or else combining soon fell apart. We naturally wonder why, when they copied our Constitution they did not follow our example and recognize the strength that comes from union. The answer to this and to many other criticisms that may be made is to be found in the history of the Hispanic race and in the geographical conditions that exist in the southern continent.

In criticising South American habits of mind and political tendencies, one must remember that the moral and intellectual characteristics that form the soul of a people are developed in its past and represent a legitimate inheritance from its ancestors. For the motives of its conduct, one must look to its history.

Historically, the Hispanic race was led to develop individualistic rather than coöperative action. In the Middle Ages the forces at work in the peninsula were centrifugal rather than centripetal.

In 713 A.D. a small handful of brave mountaineers were almost the only inhabitants of the peninsula that were able to defy the Moorish conquerors. The process of the Christian re-conquest of Spain was so slow that it took nearly eight centuries for her to grow from the lonely, rocky fastness of Covadonga to the group of Christian kingdoms that embraced the entire peninsula. Dur-

ing these eight hundred years preceding the conquest of America, the Spaniards fought almost continuously against an ever present enemy. This developed a strong municipal spirit, for the towns on the frontier were in constant danger of attacks from the Moors and it was necessary to grant them very considerable powers. As the boundaries of Christian Spain extended southward, new cities came to be frontier posts, but the old ones retained the powers and the semi-independence they had previously gained.

The result was a race of men devoted primarily to their cities; only secondarily to the province or kingdom to which their city belonged and quite incidentally to Spain as a geographical and linguistic unit. Such a racial tendency could not help developing that disregard of large national interests in preference to petty local concerns which has been a most unfortunate trait in the history of the South American Republics. For while it may be true that the conception of the city as the soul of the native country has always been effective from the point of view of the development of civilization, it has been disastrous in its effect on national progress. It was just that loyalty to the municipality that prevented the growth of the Greek Empire.

Another result of the eight centuries of Christian warfare against the infidel Moor was the development of moral and physical qualities that made possible the marvelously rapid conquest of America by small companies of *conquistadores*. Brave, bigoted, courageous, accustomed to continuous hostilities, ardently devoted to a cause for which they were willing to lay down their lives, fighting in the last ditch, it is not surprising that the ancestors of the South Americans were able to achieve such wonderful results in the 16th century.

Only a vigorous and rising nation could have accomplished the great work of exploring, conquering and colonizing America which was done in that century. As a matter of fact, a wonderful transformation did take place in Spain during the latter part of the 15th and the beginning of the sixteenth century.

The marriage of Ferdinand and Isabella united by personal bonds what had formerly been a handful of detached kingdoms.

These countries each had their own laws, their own peculiar customs and separate administrative systems. Some of the provinces were inhabited by people of different stock. The process of unification under Ferdinand and Isabella was almost contemporaneous with the colonization of America. For a career destined to be as great as that of any of the larger empires of history, Spain had at the beginning of the colonizing period an inadequate political organization. Spanish racial unity and religious uniformity were of recent growth. The European progenitors of the Spanish conquerors did not fight for Spain as a whole but rather as citizens of a municipality or as vassals of a petty king. The spirit of a centralized, unified government whose citizens are willing to sacrifice everything for the size of their nation, did not run in the blood of the *conquistadores*. Their ancestors belonged to a fragmentary and embryonic group of nations.

Spain only adopted a policy of centralization a very few years before the acquisition of her American colonies. The effect of such a change in methods of government on popular habits of thought could not be felt for generations. In the meantime, South America was being colonized by men who had no sense of racial unity and few tendencies towards concerted political action.

Hence it is not at all surprising that their descendants, the heroes of the wars of emancipation, did not find it easy or natural to unite under one government. It was in accordance with the history of their race that they should form separate political establishments. It was also in accordance with that Spanish colonial policy which forbade communication between the different colonies and in no way encouraged a community of interests.

Historically then, there was little to cause the South American colonies, on achieving their independence, to unite, even had they not been separated by tremendous natural obstacles.

The founders of the original thirteen English colonies not only inherited racial unity but providentially built their homes on a short strip of sea coast and occupied a homogeneous country, no larger than a single Spanish colony. Their union followed

as a matter of course. It was quite otherwise in South America. For, as though it were not enough that the tendency of the race was towards building up individual communities rather than federations, as though the laws forbidding the colonies from trading with one another and from travelling from one colony to another were not a sufficient preventative of union, all the forces of nature, mountains, rivers, deserts, swamps and even winds combined to promote the isolation of the new republics. The top of the highest mountain in the thirteen English colonies was not half as high as the lowest point in the ranges of lofty mountains that separated the Spanish colonies; nor one-third as high as the Uspallata Pass by which Chile is connected with Argentina.

Although the basins of the Amazon, the La Plata and the Orinoco offered many thousands of miles of navigable highways, the masses of water were too copious and too irregular to be controlled before the era of steam navigation. In the great valleys east of the Andes, the excessive fertility of the soil has produced an enormous area of continuous woodlands, a mass of vegetation that has defied the efforts of centuries to effect clearings and roads. This densely timbered and sparsely inhabited region keeps Venezuela from having any dealings with Bolivia more effectually than if an absolute desert lay between them.

There is nothing that separates one of the United States from another that is at all comparable to the lofty chain of the Andes and the impenetrable jungle that lies for hundreds of miles on the eastern slope of the Cordillera. The more one considers the matter, the more it seems as though nature could not have placed more impassable obstacles in the way of intercommunication if she had set out with that definite purpose in view. In comparison with the difficulties of travelling from Lima, the center of the old Spanish domain, to Buenos Aires, a journey from New York to Charleston in the days of the American revolution was a mere pleasure jaunt and yet it seemed difficult enough at that time. Nowhere in the English colonies existed such impediments to communication as the deserts of northern Chile and southern Peru, the swamps of eastern Colombia and

western Venezuela, the forests of Ecuador, Peru and Bolivia, or the gigantic chain of the Andes whose lowest point for thousands of miles is at least ten thousand feet above the sea.

It is not for us to criticise the South Americans for having failed to unite and form a great nation. Our ancestors were favored by nature with a region that is comparatively accessible in all parts. It is not any more creditable to the English colonists that they united than it is discreditable to the Latin-Americans that they did not. In both cases, racial characteristics, aided by diverse policies of colonial administration made a foundation for growth which by an extraordinary coincidence, was in every possible way favored by local geographical conditions. The English colonists, on securing their independence, had been acquainted with one another for generations; had fought side by side in the French and Indian wars; had inter-married, built up social and business friendships; united in sending agents to the mother country and in sending representatives to Congresses where the leading men of each colony came to know one another's desires and aspirations. Placed by fate on a narrow strip of coast less in length than the seaboard of Chile alone, enabled by nature to communicate both by sea and land, separated from one another by neither deserts nor lofty mountains, what more likely than that they should have followed their natural traditions and formed a single nation? The difficulties in the way of the South American colonists following such an example were stupendous. Scattered over an enormous area, separated by the greatest natural boundaries that nature has produced, it was scarcely to be expected that they too should not follow the traditions of their race and build up local governments instead of forming a federation.

The historical and geographical reasons that prevented the formation of confederations have also mitigated against the building up of strong national governments. The citizen is still inclined to favor the affairs of his city rather than the good of his country. He finds it easier to be loyal to the local chieftain than to the central government. The cure for this, however, is already in sight. The energy and enterprise of English, French and Ger-

man capitalists are overcoming the obstacles that nature has placed in the way of inter-communication.

In time, aided by steam and electric systems of transportation, some of the southern republics may even unite with others. But before this comes about it may confidently be expected in the near future that the development of new transportation facilities will make possible the growth of strong national feeling and will prevent the states from falling apart. It will certainly make revolutions less frequent and bring a condition of stability that will even attract American capital and greatly augment European immigration.

There are some republics, however, that will never unite of their own accord. Chile and Peru, for example, are continually at swords' points. The obvious reason is that Peru had something of value that Chile wanted, seized, and proposes to keep. But there is something deeper than nitrate fields that lies at the bottom of the trouble. A large part of the hatred that exists between Chilean and Peruvian is due to their native ancestry. In the Chilean there is a large percentage of Araucanian blood. In the Peruvian there is as much of the blood of the Quichuas. The Araucanians are the hereditary foes of the Quichuas. For centuries there was no peace between them. The Incas pushed their army of Quichuas as far south as possible but they never could conquer the lands where the Araucanians roved. Even the all-conquering Spanish soldiers were blocked in southern Chile. It is not necessary to repeat here the long story of the Araucanian wars and the heroic deeds of Lautaro and his kinsmen. Instead of being easily conquered by a handful of Spanish adventurers as were the Incas and Quichuas, the Araucanians kept the Spaniards at bay for centuries, and were in fact never subdued. The Araucanians and the Quichuas had as different racial characteristics as can be imagined. Although the Araucanians did not constitute a nation in the proper sense of the word but were divided into a large number of clans, each independent and recognizing no master, they never allowed any outside people to interfere with their national life. They were intensely independent. Even the chiefs lacked authority in time of peace. There

were no serfs or slaves. More important still, there were no laws; private wrongs had to be settled privately. All of these elements must be taken into consideration when contemplating the character of the Chilean of to-day. His Spanish ancestors brooked no interference and recognized no central government but his Araucanian ancestors were still more intensely fond of individual liberty. His Spanish ancestors were brave and fearless. No better soldiers existed in Europe in the 16th century. His Araucanian ancestors were even more war-like and after their first few defeats by the invaders they successfully assumed the offensive, storming Spanish towns and carrying off cattle and horses. Before long they organized troops of cavalry, learning to excel on an animal that their ancestors had never heard of and which the Quichua even now seldom dares to mount. Although the entire Araucanian nation was less numerous than the army of Quichuas that surrounded Atahualpa when he was successfully attacked by Pizarro, they killed more Spanish soldiers than fell in the conquest of the entire remainder of the continent. With such an ancestry, it is not remarkable that the Chileans are notoriously the best fighters on the continent to-day. Contrast their inheritance with that of the Peruvians. The Quichuas were and are a timid, peaceful folk lacking in dignity, defending themselves rather with cunning and falsehood than by deeds of arms. The servile sentiment is deeply rooted in the Quichua nature. He maintains a sense of loyalty for his former masters but he has absolutely no idea of liberty or independence. The Quichuas had reached a higher state of culture than the Araucanians but their manly characteristics were far less developed. In fact, at the time of the Spanish conquest, they seem to have been already in a decadent condition. With such blood in their veins, it is not surprising that the Peruvians were defeated by the Chileans, their country overrun and humiliated, their valuable nitrate fields seized and the seeds of intense national hatred planted that will take generations to eradicate. It is not too much to say that a voluntary union between Chile and Peru is about the last thing to be expected. Even concerted action is no more to be looked for from them than from France and Germany or any other hereditary foes.

Even apart from such special cases, however, Spanish America has abundant reason to feel that with her racial tendencies and antipathies strengthened by geographical conditions of a remarkably "helpful" character sufficient cause exists for that lack of political cohesion which has characterized her history for the past century.

THE EXTRAORDINARY SESSION OF THE PHILIPPINE LEGISLATURE, AND THE WORK OF THE PHILIPPINE ASSEMBLY

JAMES ALEXANDER ROBERTSON

Librarian of the Philippines Library

Early in 1910 it was rumored in Manila that an extraordinary session of the Philippine legislature was to be called, in order that the necessary appropriations might be made for the fiscal year 1910-1911. These rumors received no direct confirmation until the proclamation issued by the Governor-General on February 28, calling an extraordinary session to convene on March 28. Inasmuch as the proclamation touches various matters of interest at the present time in the Philippines, and suggests conditions, it is here reproduced in its essential parts:

Whereas, the First Philippine Legislature adjourned setting the date for the next meeting as October sixteenth, nineteen hundred and ten, and

Whereas, said Legislature made no provision for the continuance of public works during the fiscal year beginning July first, nineteen hundred and ten, owing to the fact that the anticipated reduction in revenue made it highly improbable that any money would be available for such objects, and

Whereas, the revenues have not as yet shown the anticipated falling off, and

Whereas, unless an appropriation for public works is made the present necessary work in connection with the construction of roads and drilling of artesian wells must suffer, and

Whereas, the present laws in regard to irrigation are not adequate and the Government is proposing to begin immediately the construction of irrigation systems very necessary for the proper development of the productive capacity of the people, and

Whereas, the Governor-General is authorized to limit the subjects to be considered at an extraordinary session of the Legislature:

Now, therefore, I, W. Cameron Forbes, Governor-General of the Philippine Islands, by virtue of the authority vested in me by section

seven of the Act of Congress, dated July first, nineteen hundred and two, do hereby order that a special session of the Philippine Legislature be convened at the city of Baguio, in the sub-province of Benguet, Mountain Province, on the twenty-eighth day of March, nineteen hundred and ten, said session to endure for a period not exceeding twenty days, exclusive of Sundays, to consider the following subjects only:

1. Organization and election of officers.
2. Current appropriations for the fiscal year ending June thirtieth, nineteen hundred and eleven,
3. Permanent appropriation bill for public works and improvements for the fiscal year ending June thirtieth, nineteen hundred and eleven.
4. A law in regard to irrigation.
5. A law providing for enlistment standing for officers and men of the Government coast-guard fleet, and other employees of the Bureau of Navigation.

Also any other matters which may, before the closing of the session, be referred to the Legislature by the undersigned.¹

It is a safe rule for an executive of a democratic country to follow not to call an extraordinary session of the law-making body of that country except as a last resort. His motives are certain to be questioned by many, and he will be criticised as spending the people's money wastefully. The present was no exception. The action of the Governor-General was declared to be a mere political trick, designed to make political capital both in the United States and in the Philippines. It was strongly asserted by some that the budget could have been passed at the last legislature. To pretend that it was impossible to pass it because of the Payne bill was simply playing politics. At any rate, said these critics, the regular session in October could have been awaited, for meanwhile it was provided by the Philippine Act, of July 1, 1902,

that if at the termination of any session the appropriations necessary for the support of the government shall not have been made, an amount equal to the sums appropriated in the last appropriation bills for such purposes shall be deemed to have been appropriated; and until the legislature shall act in such behalf the treasurer may, with the advice of the governor, make the payments necessary for the purposes aforesaid.

¹ Another proclamation of the Governor-General, issued on March 28th, set the hour for convening on that date at 3.30 p.m.

On the other hand, those who favored the measure argued that while the various expenses of the government, calculated on the basis of the appropriations of the fiscal year 1909-1910, could be met, no new work could be undertaken, and the development of the Philippine Islands would be delayed.² Also it would have been unwise, not to say extremely reckless, said they, to have made any appropriations for the future when the finances of the islands were in so unsettled a condition.

On the appointed day, the two houses of the legislature convened at the appointed place, Baguio, the summer capital. The session lasted twenty days, in accordance with the terms of the proclamation, adjourning on April 19.

The two houses of the legislature are the Philippine Commission, consisting of nine members (five Americans and four Filipinos), who constitute the upper house, and the Philippine Assembly, of eighty-one representatives, who³ constitute the lower or popular house. It is of the latter body principally that I shall treat in the following pages (although necessarily I shall be compelled to speak frequently of the executive and of the upper house), and I shall attempt to detail something of its method of working and the results of the session.

It must be remembered that the Philippine Islands have had but little opportunity for popular representative government. The nearest approach to it was in the first and second quarters of the nineteenth century, when delegates were admitted from all the Spanish colonies to the Spanish Cortes. The attention given to the matter in the Philippines showed that the opportunity was not fully appreciated,—that it was not even fully understood. The results were very meager and have received but scant attention from historians, indeed much less than the matter deserves. In 1843, Sinibaldo de Mas, a diplomat of some standing in Spain, and a man who understood Oriental conditions fairly

² The present Governor-General of the Philippines is distinctly the apostle of public and industrial improvement. See his inaugural address, in which he states clearly his position.

³ The apportionment of representation is one for each 90,000 of population or fraction thereof.

well, made a special report on the conditions of the Philippines in 1842.⁴ This report was published in three volumes, the third of which was circulated privately only among a very few, mainly Spanish officials. In this volume, Mas discusses the question of preparing the Philippines for independence. He says "After some years, . . . an assembly of deputies shall be formed from the people, in order that they may hold sessions in Manila for two or three months each year. In those sessions they shall discuss public affairs, especially those treating of taxes and budgets."⁵ It has remained for the American government to establish this Assembly. The Philippine Act, in which provision was made for the Assembly, is one of the most important documents of recent years on the subject of representative government, and one of the most important in all Philippine history since the European discovery by Magellan in 1521. The portion of the Act relating specifically to the Assembly, as amended by section eight of the Act of Congress of February 6, 1905, is as follows:

That two years after the completion and publication of the census, in case such condition of general and complete peace with recognition of the authority of the United States shall have continued in the territory of said Islands not inhabited by Moros or other non-Christian tribes, and such facts shall have been certified to the President by the Philippine Commission, the President, upon being satisfied thereof, shall direct said Commission to call, and the Commission shall call, a general election for the choice of delegates to a popular assembly of the people of said territory in the Philippine Islands, which shall be known as the Philippine Assembly. After said Assembly shall have convened and organized, all the legislative power heretofore conferred on the Philippine Commission in all that part of said Islands not inhabited by Moros or other non-Christian tribes shall be vested in a Legislature consisting of two Houses—the Philippine Commission and the Philippine Assembly.

Said Assembly shall consist of not less than fifty nor more than one hundred members to be apportioned by said Commission among the provinces as nearly as practicable according to population: *Provided*, That no province shall have less than one member: *And provided further*, That provinces entitled by population to more than one member may be divided into such convenient districts as the said Commission may deem best.

⁴ *Estado de las Islas Filipinas en 1842*. Madrid, 1843. The third volume is given almost entirely in Blair and Robertson's *Philippine Islands*, vol. lii.

⁵ See Blair and Robertson, *ut supra*, lii, p. 87.

Public notice of such division shall be given at least ninety days prior to such election, and the election shall be held under rules and regulations to be prescribed by law. The qualifications of electors in such election shall be the same as is now provided by law in case of electors in municipal elections. The members of the Assembly shall hold office for two years from the first day of January next following their election, and their successors shall be chosen by the people every second year thereafter. No person shall be eligible to such election who is not a qualified elector of the election district in which he may be chosen, owing allegiance to the United States, and twenty-five years of age.

The Legislature shall hold annual sessions, commencing on the first Monday of February in each year and continuing not exceeding ninety days thereafter (Sundays and holidays not included): *Provided*, That the first meeting of the Legislature shall be held upon call of the Governor within ninety days after the first election: *And provided further*, That if at the termination of any session the appropriations necessary for the support of Government shall not have been made, an amount equal to the sums appropriated in the last appropriation bills for such purposes shall be deemed to be appropriated; and until the Legislature shall act in such behalf the Treasurer may, with the advice of the Governor, make the payments necessary for the purposes aforesaid.

The Legislature may be called in special session at any time by the Civil Governor for general legislation, or for action on such specific subjects as he may designate. No special session shall continue longer than thirty days exclusive of Sundays.

The Assembly shall be the judge of the elections, returns, and qualifications of its members. A majority shall constitute a quorum to do business, but a smaller number, may adjourn from day to day and may be authorized to compel the attendance of absent members. It shall choose its Speaker and other officers, and the salaries of its Speakers and officers shall be fixed by law. It may determine the rule of its proceedings, punish its members for disorderly behavior, and with the concurrence of two-thirds expel a member. It shall keep a journal of its proceedings, which shall be published, and the yeas and nays of the members on any question shall, on the demand of one-fifth of those present, be entered on the journal.

Under the provisions of the section of the act cited above the inaugural session of the first legislature was convened October 16, 1907, and adjourned February 1, 1908; the first session was convened on February 1, 1909, and adjourned May 20; and a special session sat from May 22, 1908, to June 19, 1908. The extraordinary session just closed is the first time that the second legislature has been convened.

When one considers the lack of opportunity that the Filipinos have had for representative government, this extraordinary session marks an epoch in the history of the Philippine Islands. This remark is no idle panegyric, but is based on actual contact and conversation with various members of the Assembly, as well as attendance at many of the open meetings of the Assembly. I do not mean that the Assembly is above criticism; but that, as a body, it has profited much from the first legislature, and has reached a point not reached before, and one that presages well for future sessions. The Assembly is by the terms of the Philippine Act modeled very closely after the United States House of Representatives. Its presiding officer, the Speaker, like that official in the House of Representatives, wields very great power, and is easily the second or third official in influence in the Islands. Very largely on him depends the nature and quality of the legislation enacted, and the success and failure of the session.

The assembly just closed was remarkable in several respects: for the discipline exercised by the Speaker; for the great earnestness displayed by the representatives in general; for their dignity of bearing; and for their freedom from jingoism; and, outwardly at least, from party passion—outwardly, I say, because considerable party passion and personal feeling did at times creep into committee and secret meetings. In general, it may be said that this Assembly in its quietness and dignity of action has established a precedent that can well be taken as a form for future sessions.

On the other hand, it has been freely charged that the discipline exercised by the Speaker was only the old-time caciqueism⁶ raised to the nth degree, and that he held his party in the hollow of his hand through its working. There is doubtless some truth in this, for the Philippine Islands are by no means free from caciqueism, and will not be free from it for several generations. Only with the growth of larger public opinion can caciqueism disappear, and development of industries and better education will be among

⁶ See the excellent chapter on caciqueism or bossism, in LeRoy's *Philippine Life in Town and Country*. Osmeña has denied the charge of caciqueism in a long speech at San Miguel, Bulakan, May 7.

the most powerful factors in the creation of a real, live public opinion. Again, it is charged that Osmeña, the Speaker, slavishly followed the behests of the Commission, and by means of the influence which he wielded, forced through various measures emanating from that body. This is not altogether patent, and from the data at hand must be decided by each one in accordance with the facts as he sees them. The game of politics is one that admits of many shades of belief. Certainly, the failure to pass the irrigation bill, which was one of the objects most desired by the Commission, must be counted against this accusation.

While it might be said that this special session was called upon to consider but a limited range of subjects, and cannot, therefore, be taken as a typical session, where there is more at stake, yet an examination of the various bills introduced and discussed shows a considerable range of interests, and those interests among the most vital in the Philippines. That they were treated in so earnest and dignified a manner must score a point in favor of the working of the Assembly. On the whole there was an absence of bombast and fireworks that was refreshing.

It cannot be said that all the legislation proposed in the Assembly was of the highest order or even judicious. Sometimes, indeed, it bordered on the ridiculous. Such was the resolution offered by one member, in his zeal for economy, to put the Constabulary Band up at auction and sell it to the highest bidder, although it is conceded that this proposal might have been one of mere humor. A plea for economy also led the committee, which considered the appropriation for the Civil Service, to reduce it so that its usefulness would be greatly crippled, a measure that was fortunately satisfactorily adjusted in the final bill. There was also manifest an intention, scarcely more than a tendency, on the part of the Assembly, to reduce the number of Americans in the government employ. Of course, the members can scarcely be blamed for this, since it is the well-known policy of the government to employ fewer and fewer Americans as the years roll by, and there is a sufficient body of Filipinos fitted by training and education to take the government positions. This, however, is a matter that must be carefully watched, and in which progress

must still be somewhat slow. Some of the highest positions in the government, are now filled by natives, namely, four commissionships, and the offices of chief justice and attorney-general.

The two most striking figures in the assembly were the Speaker, Sergio Osmeña, and the leader of the minority, Vicente Singson Encarnacion, generally called Singson. The first represents the province of Cebú, and the second that of Ilocos Sur. They are both mestizos, and the name of the minority leader indicates that he has Chinese blood, which, by the way, is among the best blood in the Islands. He is a relative of the martyred Rizal, who, it has recently been determined by Austin Craig, of the Normal School of Manila, was more than half Chinese. Osmeña is leader of the Nacionalista party, whose slogan has been national independence; Singson is leader of the Progresista party, which professes to be willing to wait until independence can be earned by the fruits of the progress made, and not a national independence, but one guaranteed by the United States.

Opinions as to the place of the two men differ. By some Osmeña is accorded first place, but many assert that Singson is the more clever of the two. They are both skilful politicians and play the game well. Neither can be called a statesman, but both are astute, ready, adaptable, quick to seize an advantage, and each holds his followers well in hand.

By some, a third representative, Pablo Ocampo, representative for the south district of Manila, is placed ahead of either Osmeña or Singson. Ocampo was formerly one of the deportees to Guam. He is leader of one wing of the Nacionalistas, but in the session just closed he seems to have cut comparatively a small figure. Other men were more or less conspicuous in this session. Among them were Gregorio Nieva, Secretary of the Assembly, Jaime C. de Veyra, representative for Leyte, Alberto Barretto, representative for Zambales, José Maria Valle, representative for Ilocos Sur, Mariano Ponce, representative for Bulacan a well known editor and literary man, Tomas G. Del Rosario, representative for Bataan, and Macario Adriatico, representative for Mindoro. The chairmen of the various principal committees were more or less conspicuous, as were some of the chairmen of the sub-com-

mittees, by reason of their duties. Still, in this, as in all instances of legislative deliberations, chairmen were not always chosen for their fitness.

Much of the work of the Assembly was naturally done in the committee-rooms. The measures favored by the majority were also doubtless largely arranged in informal gatherings, some of which, it is asserted, were held at the house occupied by the Speaker, and right here is the origin of some of the charges of caciqueism. Up to a certain point, there is nothing against this sort of legislation, although the legitimate lengths to which it may be carried can be easily overstepped. If it leads to arbitrary measures and to too partial a recognition of members in debate, its baleful effects should be curtailed, possibly by a revision of the rules. It was in committee and secret sessions that most of the stormy scenes of the session occurred. Rumors of some of them have reached the outside. There were four chief committees on appropriations, namely, those of the Departments of Finance and Justice, Public Instruction, Commerce and Police, and the Interior. The next important committee after these was perhaps that of Irrigation. Each of the committees on appropriations were divided into various sub-committees, so that the entire field could be covered to the best advantage. In the actual working of the committees might be detected at times a lack of smoothness and a tendency to quibble over small matters, and a consequent lack of breadth of view. These, as the Assemblymen become more familiar with their duties, more accustomed to representative government, and more learned as to the correct perspective of the various matters brought to their attention, will doubtless be reduced.

Comparatively little data could be obtained from the short sessions of the Assembly that were open to the public, except during a few days when open discussion was prolonged, as for instance, the discussions on the seating of Dr. Dominador Gomez and on the irrigation bill. At the beginning of each meeting, the Assembly hall was cleared of all visitors and roll-call and the mapping of the day's work, and other matters conducted in secret. As a result many of the open meetings were very short, and the

procedure was entirely formal and cut and dried, consisting in the reading or passing of bills by title, etc. This method of conducting so much of the business in secret session has been criticised by many. It may have proceeded from too great a self-consciousness of the Speaker or of the Assembly as a whole, from racial characteristics or previous Spanish training, or possibly in imitation of the Commission, none of whose meetings are public. Whatever the cause, the practice should be abandoned as much as possible. The typewritten sheets, passed to all the delegates, outlined briefly the day's business. The various matters treated after the opening act were: business on the Speaker's table; messages from the Commission or the Governor-General; reports of committees; proposed acts, resolutions, memorials, and petitions of a general character; and *idem*, of a special character. The several bills, petitions, etc., were given by title on this sheet, and in some instances, the messages from the Executive.

There has been considerable talk in various quarters (and this proceeds mainly from Filipinos) that the Assemblymen were out on a holiday to the summer capital and were drawing their thirty pesos per day (and this is said with sinister meaning), and that they were betraying their country into the hands of the Americans represented by the Governor-General. This is calumny pure and simple. As in any legislative body, doubtless the influence of the Executive was felt. Most of the delegates were exceedingly in earnest, and worked up to the measure of their ability. No one could watch them in debate, in the corridors of the executive building, or through the open doors, and not come to that conclusion. The measure of the real active good of the Assemblymen must be read from their individual ability and their familiarity with legislative methods. Coercion from party leaders was evident at times and a sheepish following of party. The directive intelligence of the leaders was plainly to be seen in each measure. Conversations with various of the delegates showed them to be, on the whole, men of relative superior intelligence, alert, and anxious for the best good of the Philippines. This last is a very significant fact. The delegates, although elected to represent a certain locality, are keenly alive to the fact that they represent all the Philippines

and must obtain the best good for the whole country. There is still considerable sectionalism, but the growth of the larger feeling is plainly discernible. This is the best hope for the Philippines. Just so far as racial antagonism dies out will come the feeling of solidarity and homogeneity. The Assembly will accomplish much of this, and will continue the work so well begun by education and development of resources and improvement of communication. Not the least benefit that will accrue to the Philippine Islands from the Philippine Act will be a greater understanding of the benefit and desirability of communality of interests. It is now that the hopes and aspirations of Rizal and other enlightened leaders are coming true, perhaps in a manner they little dreamed of, but still in as lasting and complete a form as they could wish. All of this has been more discernible, perhaps, in this session of the Assembly than in any of the others. If the leaders proceed with the wisdom that Rizal would have had, it is not too much to say that the Filipino Assembly will have permanently an honored place among the deliberative assemblies of the world.

A curious phase of the session was the division of the parties and their support. The wing of the Nacionalistas, under the leadership of Osmeña, supported the government, notwithstanding that that party is pledged to national independence. The Progresistas, on the contrary, formed the opposition party. As a matter of fact, party does not mean so much as the name indicates and the degree of radicalism is tempered somewhat by the government support or opposition, and in the present instance it was decidedly to the interest of the government to favor the Nacionalistas.

THE WORK OF THE ASSEMBLY

In his message to the legislature on the day of convening, the Governor-General stated more clearly and at greater length than in his proclamation,⁷ his reasons for calling the extraordinary session, and noted the matters calling for legislation. An ex-

⁷ See *ante*.

pected reduction in the revenues of the islands had caused the last regular legislature to adjourn without making any appropriation for the continuation of public works during the fiscal year 1910-1911. However, instead of a decrease of from 1,000,000 pesos to 3,000,000 pesos, per annum, because of the operation of the Payne bill (on account of the establishment of free trade between the Philippines and the United States), eight months of the present fiscal year showed a net increase in total revenues of 938,072.80 pesos.

In view of the unexpected increase, the Governor-General recommended the appropriation of certain sums for public works and for certain increases in the sums appropriated to several bureaus. He felt safe in making this recommendation, for the Act of 1902⁸ allowed him to cover back into the treasury any funds previously appropriated, and in case the revenues fell off, this would ensure against any serious deficit. Consequently, the Governor-General asked legislation on the following matters:

1. Vote of an annual sum of 1,500,000 pesos for the construction of roads and bridges.
2. Appropriation of 250,000 pesos for the drilling of artesian wells during the fiscal year 1910-1911.⁹
3. An appropriation of 500,000 pesos for harbor improvements¹⁰ and the extension of the navigation of Cagayan River.
4. An appropriation of 150,000 pesos to cover the deficit of the Bureau of Education.¹¹

⁸ The title of this act (enacted May 18, 1909) is "An act authorizing the Governor-General to direct that any unexpended balances of appropriations be returned to the general fund of the insular treasury and to transfer from the general funds moneys which have been returned thereto.

⁹ Artesian wells are proving of great benefit in the Philippines because they provide pure drinking water and thus tend to lessen diseases, especially dysentery.

¹⁰ Harbor improvements are under way in Cebú and Iloilo; the port of Dagupan also needs considerable improvement.

¹¹ The last session of the legislature appropriated 3,275,000 pesos for purposes of education as against 3,182,720 pesos for the fiscal year 1907-1908. The first session of the legislature provided 75,000 pesos by act 1866 for assistance in the barrio schools, and the second session appropriated a like sum. Many schools were established in consequence of this action of the legislature. For the present fiscal year, the Governor-General pointed out, the continuing expenses of these schools were not provided for. From this and from other causes the Bureau

5. An appropriation of 44,000 pesos to aid the Bureau of Labor, created during the last session of the legislature.¹²

6. An appropriation of 850,000 pesos for the Bureau of Agriculture to continue the fight against rinderpest and for various other matters.

7. An appropriation of 200,000 pesos to cover the deficit in the Constabulary.¹³

8. Legislation on irrigation.¹⁴

9. Legislative measures looking to the control of the maritime police.

of Education had a deficit of 404,000 pesos at the end of 1909. But since any money received under operation of Act No. 1761, known as the "Opium Law," was by law available for purposes of education, the Governor-General had allotted 500,000 pesos for education on September 10, 1909. Under the new management of the Bureau of Education, and with the Department of Public Instruction under guidance of Vice-Governor Gilbert, the present rate of education could be maintained with a saving of 150,000 pesos per annum over the cost of last year. All this saving could not be effected, however, this year, so that the administration was confronted with the alternative either of closing immediately about 1,200 schools and of depriving some 75,000 children of the privileges of education, or of asking for a deficiency appropriation of 300,000 pesos. The Governor-General stated that he could appropriate 150,000 pesos from the "Opium Fund," and asked a like amount from the current revenues to cover the deficit. Further, he asked that the total appropriation for education in the fiscal year be increased from 3,275,000 pesos to 3,525,000 pesos. Otherwise the Bureau of Education could not continue its work and would be compelled to close 800 schools.

¹² The appropriation for the present fiscal year was only 18,500 pesos, but it was deemed best at that time to ask only for a sufficient appropriation to enable the bureau to perfect its organization. The appropriation had done scarcely more than pay the personnel. The bureau has done efficient work in preventing strikes and has obtained employment for many men.

¹³ The Constabulary has been a source of much thought and of considerable friction in the Philippines, as any police body must naturally be. During the last year, it has been reorganized and reduced to the extent of 460 men or nine companies. By the creation of a greater number of majors and the dropping of some captains and lieutenants, a saving has been obtained. The Governor-General requested that the 200,000 pesos be appropriated annually. The Assembly would only agree to allow 50,000 pesos.

¹⁴ Considerable attention is given in the message to the subject of irrigation. The last session of the legislature passed a continuing per annum appropriation of 750,000 pesos. A Division of Irrigation has been created in the Bureau of Public Works and irrigation work has been begun. No method has been devised of collecting from the people benefited the cost and the expense of operation and the maintenance of the system, or of reimbursement of the original cost as provided

Seventy-nine of the eighty delegates to the Assembly had gathered in Baguio by the night of the 27th of March. The eightieth, by name Pajarillo, who was chosen representative for Capiz, had just been incarcerated in Bilibid prison in Manila, for the murder of a Filipino.

For some time, the question of the next Speaker of the Assembly had been widely discussed. Choice lay between Osmeña, the former Speaker, Singson, and Ocampo, while some were so wild as to suggest the name of Dr. Dominador Gomez. On the evening of the 27th, the two first were proclaimed by their followers. Felipe Agoncillo, of Batangas, who, it will be remembered, was the ambassador from the so-called Filipino Republic to the United States and Canada, managed the campaign of Ocampo. On the opening day, Osmeña, who had received the support of the government, received 55 votes, Singson 15, Ocampo, who made the mistake of allying his forces with those of Gomez, 6, while three votes were scattering. Osmeña was accordingly declared elected. Gregorio Nieva, who acted as chairman of the Assembly until the election of the Speaker, was elected secretary of the Assembly, and has proven a remarkably efficient official.

As seen above, one of the powers of the Assembly is to pass on the qualifications of its members. At the first meeting of this special session, Dr. Dominador Gomez,¹⁵ who has given so much trouble in the Philippines, and who had been elected to represent the north district of Manila, was refused a seat in the

under the terms of the law, so that the Philippine Islands are being deprived of early construction pending the completion of agreements with property-owners to take water and pay for the same at a rate fixed by the government. The government should be authorized to make such collections. The law was not intended to do away with any private rights.

¹⁵ Gomez is a man of great, though misused ability. As a boy he studied under the Jesuits in Manila. This was followed by two courses in medicine in the University of St. Towás, in Manila, with a further course in Madrid. He took part in the Cuban campaign where he attained considerable success and won twice the cross of María Cristina. He returned to Spain, where he became a member of the committee for reforms in the Philippines. In 1901 he returned to Manila, where he practiced medicine. In 1902 he founded a labor organization and was that same year leader of the Nacionalista party. He has been persona non grata with the government almost since his return.

Assembly. Much heat was shown in the discussion of this matter, but Representative Kalaw's ¹⁶ motion to refer the question to a committee passed by a vote of 44 to 29, those voting in favor of Gomez being the elements supporting Ocampo and Gomez, as well as the Progresistas. By this action, which was a virtual refusal of a seat to Gomez, the Assembly proved that it was in real earnest. Nothing reflects more credit on the Assembly as a body and to the Speaker as a presiding officer than the refusal to seat this man.

Not until the last night of the session did the committee bring in its report, a copy of which lies before me. It covers eight typewritten pages, and, notwithstanding its length, it is so clear and will have so great a value in other contested seats that, did space permit, an analysis of it would be both interesting and profitable. The committee reported that Gomez was disqualified as a delegate and that he be denied the *prima facie* right to take the oath as such, and that his definitive exclusion, as well as the manner of filling his seat be referred to the Committee on Elections and to the Committee on the Internal Government of the Assembly.

This report forever settles Gomez's political career in the Philippines unless the Assembly stultify itself. There was a protest made against allowing José Clarin of the province of Bohol to take his seat, but it was not sustained.

At the second meeting of the Assembly, the Speaker appointed the special appropriation committees for the Departments of Finance and Justice (with Alberto Barretto as chairman), Public Instruction (with Singson as Chairman), Commerce and Police (with Venancio Concepcion, of Cagayan, as chairman), and the Bureau of Public Works (with Macario Adriatico as

¹⁶ Kalaw is representative for Batangas. He was director of the newspaper *Renacimiento*, which was prosecuted recently by Secretary Worcester for libel. Although Kalaw did not write the editorial, to which exception was taken, he refused to name the writer and stated that he as director was alone responsible. As a result of the proceedings, the paper suspended publication, but immediately reappeared under the name of *Vanguardia*. Several of the representatives objected to Kalaw's taking his seat because he had been indicted for libel, but this was overruled.

chairman). An irrigation committee was also appointed, under the chairmanship of Esperidion Guanco, of Iloilo. There were also other committees, but they exercised a minor part in the deliberations of the session.

During the session a total of over seventy Assembly bills were reported and discussed, although not all were passed. These were mainly appropriation bills, and divided mainly into the classes of public works and education. Assembly Bill No. 1, presented on April 1, amended Act No. 1854,¹⁷ which provided 750,000 pesos annually for the promotion, establishment, and maintenance of systems of irrigation in the Philippine Islands. Other bills that can be classed under public works included the drilling of artesian wells, the dredging of rivers, harbor improvements, the building of sea-walls, and building and repair of roads and bridges. Bills of an educational character were many and showed a wide range. This is indicative of the great interest taken by the delegates and by the Filipinos in anything connected with the advancement of their race in the acquiring of knowledge—an interest that must be productive of much good. With this interest in education is coming a greater interest in industrial development, which is one of the most healthful signs discerned here.

The first Assembly bill of an educational character appropriated 100,000 pesos for the creation of a nautical school. The construction of new school-houses, the settlement of the traveling expenses of teachers who attend normal classes in the capital or elsewhere, Filipino students in America and Europe, increased pay to teachers, pay of municipality teachers, and the University of the Philippines were among the educational bills. Of importance is Assembly Bill No. 30, framed in accordance with a message from the Governor-General recommending that the Gabaldon Act, No. 1801, providing for the erection of school-houses in barrios, be amended.¹⁸

¹⁷ Enacted June 13, 1908, and entitled, "An act to authorize the appropriation of seven hundred and fifty thousand pesos annually for the promotion, establishment, and maintenance of irrigation systems in the Philippine Islands."

¹⁸ Act No. 1801 was the first bill passed in the inaugural session of the Assembly (enacted Dec. 20, 1907) and is entitled "An act providing for an appropriation of

The Governor-General's message in regard to the University of the Philippines is interesting. In accordance with Act No. 1870¹⁹ the Regents of the University have already opened a college of Agriculture and a School of Fine Arts,²⁰ and has erected buildings for a College of Veterinary Science. It proposes to establish a College of Civil Engineering and one of Philosophy, Science, and Letters. The original sum of 100,000 pesos, as well as an additional sum of 50,000 pesos has been spent on the work. A good and easily accessible site for the buildings of the University has been selected near the center of the Medical College, Hospital, and Normal School. This land can be purchased at 2.14 pesos per meter, which is held to be a reasonable figure. The money necessary for the purchase was granted to the Governor-General by Acts 1902 and 1954.²¹ To maintain the University during the ensuing fiscal year, the Secretary of Public Instruction asked 201,410 pesos. In accordance with the tenor of this message, Assembly Bill No. 57 provided the funds for the running of the University, but the appropriation in the final bill was reduced to 190,010 pesos.²²

one million pesos for the construction of schools in the barrios under certain conditions." This act was amended by act No. 1914 on May 19, 1909, which is entitled "An act amending act numbered 1801, entitled . . . by reducing the required school attendance, and providing that buildings shall be erected under rules and regulations presented by the Secretary of Public Instruction."

¹⁹ Enacted June 18, 1908, and entitled "An act for the purpose of founding a University for the Philippine Islands, giving it corporate existence, providing for a Board of Regents, defining the Board's responsibilities and duties, providing higher and professional instruction, and for other purposes.

²⁰ This department of the University was founded in compliance with the request of many Filipinos. The Filipinos are artistic by nature, and attendance (tuition is free) has been very large. The work done has been of a high order. While it is recognized by the regents that the industrial and academic departments are just now of great benefit to the Filipinos, they have wisely yielded to the desire for esthetic culture.

²¹ See *ante* note 8. Act No. 1954, enacted May 20, 1909, and amending various other acts, provided for the issue of bonds for public works and improvements.

²² The appropriation was divided as follows: Board of Regents 1,500 pesos; College of Agriculture, 68,800 pesos; College of Fine Arts, 28,010 pesos; College of Veterinary Science, 18,100 pesos; College of Philosophy, Science, and Letters, 67,600 pesos; and College of Engineering, 6,000 pesos.

Agriculture and allied industries received careful consideration. The campaign against the rinderpest is to be continued by a special appropriation of 250,000 pesos, while one bill also provided a prize of 30,000 pesos for the discovery of a method rendering animals immune to that disease.

The Governor-General's message recommending a transfer of the Bureau of Agriculture to the Department of Public Instruction, and the bill of the Commission to that effect, were acted on favorably by the Assembly, with only one slight amendment. The compelling reason for the transfer is that the College of Agriculture is a part of the University of the Philippines.²³

An appropriation for prizes to be given to those who distinguish themselves in the growing of rice, abacá, and other Philippine products was the subject of one bill. Another appropriated 800,000 pesos for the improvement, protection, and development of agriculture. Still another proposed to set aside 1,000,000 pesos for the purchase of carabaos to be sold to the farmers of the Islands at special rates. Happily, this bill, which smells badly of special interest, failed to pass.

The important matter of sanitation was considered in several measures. The training of Filipino nurses was transferred from the Bureau of Education to that of Health, where it more properly belongs. A technical commission was provided for by another bill, with an appropriation of 20,000 pesos for the study of the mineral waters of the Philippines. The powers of provincial governments over the funds of the provinces, and in other ways, were increased by Assembly Bill No. 59 (Act No. 1979). This bill is looked on as very important by the Assemblymen. In accordance with a message of the Governor-General, recommending the creation of a calamity fund the Assembly framed such a measure, which was concurred in by the Commission just before the end of the session. The committee provided for by the bill is to be selected from both the Commission and the Assembly, and the money is to be distributed to the communities that need it because of fire or other calamities.

²³ Since agriculture is the most important industry of the Philippines, it would seem that a new department, to be known as the Department of Agriculture, should be among the new creations of the near future.

Of importance was the bill framed in the Commission and transmitted to the Assembly proposing an amendment to the organic law of the City of Manila, by which that city is empowered to grant franchises for certain semi-public ends. Of still greater importance was the bill framed in accordance with the recommendation of the Governor-General providing for a lengthening to ten years of the period during which timber, other forest products, and stone may be taken freely from public lands, without the forestry and other fees, when such products are to be used for necessary building, fuel, etc., and not for business purposes.²⁴ Another message from the Executive recommended that the Postal Savings Act be amended in order that the money deposited therein might be invested in various safe enterprises. This action has been taken in accordance with Commission Bill No. 8, or Act No. 1785.

The bill that produced more discussion than any other except the general appropriation bill was the irrigation bill, which was debated warmly in the Assembly for five or six days and finally laid on the table until the October session, as the Commission and the Assembly locked horns over the terms of the bill. It was a long measure of 58 articles when finally passed in the Assembly; nearly every one of the original articles as reported from the Commission and by the Assembly; committee having been amended and some new articles added. In the Assembly this bill was known as Assembly Bill No. 51, and was entitled "An act providing a system for the direction, administration, distribution, use, and right to the use of public waters, and for the determination of the existing rights over the same, within the Philippine Islands; and providing for the study, construction, conservation, and exploitation of irrigation by the government of the Philippine Islands, the reimbursement of the sums

²⁴ This amends section 9 of Act No. 1407, enacted October 26, 1905, entitled "An act abolishing certain bureaus of the insular Government, reducing the number of bureaus by consolidating certain bureaus with others, prescribing the duties of the various bureaus and certain officials thereof, reorganizing the Departments of the Interior, Commerce and Police, Finance and Justice, and Public Instruction, assigning certain bureaus to the immediate and direct executive control of the Governor-General, and for other purposes."

spent in the same, and the establishment of penalties for their infraction." The committee reporting on the bill stated that the backward state of agriculture demanded prompt remedy, part of which lay in the establishment of efficient irrigation. It will be necessary for the government to engage in this work, but the rights of any private persons who have engaged in irrigation enterprises will not be curtailed. There are still two-thirds of the agricultural lands of the Philippine Islands to be placed under cultivation, and much of the other third is unproductive for lack of irrigation. The cost to the landowners must be carefully studied, so that the system will not be oppressive, and that when once the cost of construction is met, there may be no further tax.

One of the bills passed by the Assembly on the last night of the session was that approving the action of the Executive in deporting twelve Chinese from Manila, of which so much talk has been raised in the Philippine Islands. The matter was made the subject of a special message by the Executive to the Assembly. It is rather difficult to see what was gained by the bill, for if the Executive had a right, by virtue of his office, to deport undesirable persons from the Islands, he needed no approval from the legislative body for his action. The bill has not met with favor among all Filipinos, and Osmeña, the Speaker, was severely criticised for allowing such a measure to be passed.²⁵

The general appropriation bill against which three votes were registered) was the last bill to be passed during the session, which officially closed at the hour of midnight on April 19, but which really closed at 4:55 on the morning of April 20. As first reported by the Assembly to the Commission, the bill appropriated a total of 18,120,465.94 pesos, as against 19,804,567.94 pesos asked. More was conceded to the Bureau of Education than the sum asked for by the Commission, while other branches of the government were reduced. The Bureau of Civil Service, the

²⁵ In his speech of May 7, at San Miguel, Osmeña discussed at length this question. He claimed that the Assembly has gained in power at the expense of the Executive, by the mere fact of having been asked to approve the Executive's action.

Constabulary, the Philippines Library and other bureaus were reduced from the sum asked or from the appropriation of last year. The Government Printing Office, the Ice Factory, and the Bureau of Supplies have all been hitherto on a business basis and no appropriation has been made for them. The Assembly sought by making a special appropriation for each to bring them within the provisions of the appropriation bill for the purpose of greater economy. But by so doing the operations of each would necessarily have been hampered, as they could do business only so long as the appropriation lasted, and hence there would be no economy but a loss. Various conferences between the committee and chairmen of the special appropriation committees of the Assembly and the Commission were necessary in order to come to some adjustment of the bill. In consequence, various items were changed, among others the sum granted to the Bureau of Education being reduced somewhat, but still carrying more than the sum asked by the Commission. The three bureaus of Printing, Ice Factory, and Supply were left on a business basis.

THE RAILROAD BILL AND THE COURT OF COMMERCE

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The new railroad bill considerably widens the domain of federal control over interstate railroad transportation, and should serve to elevate the Interstate Commerce Commission to a position of correspondingly enhanced influence. New matters have been subjected to the jurisdiction of that body, and its powers in those matters already confided to it are substantially augmented in important particulars. But interesting as are these portions of the new law in themselves, they represent in the main nothing more than extensions and elaborations of principles already firmly established in former Acts regulating interstate commerce. To the student of constitutional law they present no problem that has not been thoroughly discussed in the debates over previous bills or settled by the courts. His attention, however, is at once arrested by the court feature of the new bill, although this occupied a position of secondary importance in the debates in Congress. This newly created Court of Commerce represents a notable innovation in the judicial system of the United States. It is a tribunal unlike any other known to American law, and its establishment warns us that even the judiciary may not wholly escape the effect of the universal tendency toward specialization which is such a prominent feature of modern life.

The Commerce Court is created and its jurisdiction defined in Sections 1-6 of the bill as passed. It is given exclusive cognizance of certain specified classes of railroad cases. It will be composed of five circuit judges of the United States, of whom four shall constitute a quorum, and three must concur in its decisions. In the first instance the new tribunal is to be manned by five additional circuit judges to be appointed by the Presi-

dent and designated by him to serve in it one, two, three, four and five years respectively. As the term of each of these new judges expires, his place will be filled by a judge to be assigned by the Chief Justice from among the present circuit judges of the United States for a period of five years. Each judge, after his retirement from the Commerce Court, is made ineligible for reappointment therein for at least one year. But if business is slack in the new court, its judges may be temporarily sent to any circuit court or circuit court of appeals. The new court is equipped with a seal, a full corps of marshals and clerks, and powers similar to those of a circuit court of the United States. Appeals may be taken direct to the Supreme Court. Detailed provisions regulate the issuance by the court of mandates temporarily suspending orders of the Interstate Commerce Commission until after final hearing. Lastly, it is provided that suits which would otherwise be defended by the Interstate Commerce Commission shall henceforth be brought against the United States and managed by the Attorney-General; but in all proceedings in the Commerce Court the United States, the Interstate Commerce Commission, or any individual, corporation, association or community interested or affected, may intervene as of right and be represented by counsel.

In his message of January 7, 1910, in which the subject of this new court was first officially broached to Congress, the President assigns as the principal reasons for its establishment the expedition and uniformity which it may be expected to introduce into railroad cases. His position, however, was sharply assailed by many members of both the Senate and the House of Representatives, who pointed out that the delays complained of have usually been attributable to the complexity and volume of the testimony to be taken, and the time required to perfect appeals—causes which would tend equally to retard proceedings in the new court. As to the promised uniformity of decision, this can be supplied by the utterances of the Supreme Court alone, irrespective of the courts from which the appeal is taken.

It undoubtedly seems difficult to refute the above reasoning. The "uniformity" argument need not be further elaborated.

The principal improvement in the matter of "expedition" afforded by the new bill lies in the provisions made for simplified procedure and for transmission on appeal of the original record instead of a printed transcript to the Supreme Court, both of which could have been equally well applied to the existing judicial system. It is not the railroad cases but rather the general business of the federal courts that is most apt to be accelerated by the establishment of this new court. The transference of railroad cases to a special tribunal will of course relieve the dockets of the regular courts by so much; but it is a grave question whether the advantages thence resulting are sufficient to justify the expense of the commerce court, especially in view of the paucity of cases which are likely to find their way to it.

The above considerations, however, relate to the expediency of the new court, not to its legal character. From the latter point of view, the first question of importance is as to whether the Commerce Court is a "court of the United States," in the constitutional sense. Many consequences hang upon the answer that may be returned. If the Commerce Court is not a constitutional court, the Chief Justice will doubtless refuse to designate circuit judges to sit in it. These same circuit judges, even if duly assigned, might decline to act. On the other hand, the newly appointed judges, at the end of their terms of office in the Commerce Court, might not be recognized as circuit judges of the United States authorized to wield the federal judicial power.

Be it noted in passing that there is no question of "due process of law" involved in the problem. Whether the Commerce Court be an administrative or a judicial court is really immaterial so far as the rights of the carriers and the public are concerned, because orders of the Interstate Commerce Commission are in either event ultimately reviewed by the Supreme Court itself. The right of appeal is unrestricted, and is made the more effective by the precedence given to these railroad cases over all but criminal cases. This appeal will doubtless be entertained by the Supreme Court, even if the Commerce Court be not a constitutional court, as is done in cases coming from territorial courts, the court of claims, the commissioner of patents, and other spec-

ial tribunals that admittedly do not exercise the judicial power of the United States. Hence, there cannot be any legal obstacle in the way of requiring parties affected by the action of an administrative board to appeal to an administrative court before they obtain such judicial review as they may be entitled to.

There is no doubt that Congress intended to make the Commerce Court a court of the United States. The new court is so described in the enacting clause of the bill. It is given powers and privileges similar to those conferred upon the existing circuit courts "so far as the same may be appropriate to the effectiveness of the jurisdiction hereby conferred." Its authority and that of its officers may be exercised anywhere in the United States. It is given power to issue all writs and process incident to the full exercise of its jurisdiction, and these are made effective throughout the country, and are to be treated in all respects like those issued by the existing courts. But in spite of these and other similarities between the Commerce Court and the federal circuit and district courts, there are two striking points of difference. First, the Commerce Court is given cognizance over only a single class of cases: second, its judges sit in it for limited terms of years, at the end of which they must be transferred to other courts. We have to inquire, therefore, whether either of these differences affects the juridical character of the new court.

Many practical objections were urged in debate against the creation of this court of special and limited jurisdiction. It was said that the appointment of the judges would be surrounded by political influences; that this specialized court would increase the tendency toward centralization; and that judges who try only railroad cases will be exposed to the danger of becoming narrow in their views. The objection most frequently pressed, however, against this particular feature of the bill, was that a special court such as this, with jurisdiction confined to a single class of cases, is foreign to the entire genius of our judicial system, which heretofore had known only courts of general jurisdiction.

These objections were directed against the policy, not the constitutionality of the bill. And although it is true that special

courts of this character were probably not contemplated by the framers of the Constitution, and have never before been seen in American legal history, we cannot for that reason alone believe the present law unconstitutional. Congress is given a general power to ordain and establish such inferior courts as it may think "necessary and proper." And although we may not approve of such a radical departure from the established judicial system, it must be recollected that this is the creation of statute only and can be changed in the same mode. It is likewise true that the present district courts possess only jurisdiction over special classes of cases, so the question would at once arise, where should the line be drawn between courts of special and general jurisdiction? Finally, it would seem difficult to establish the proposition that a court cannot be given jurisdiction over certain classes of cases which appear to call for special treatment solely because it has not been invested with jurisdiction over other cases not requiring similar treatment. This would be pushing attachment to tradition to an unjustifiable extreme. It may be laid down with reasonable certainty, therefore, that there is nothing in the constitution to prevent the limitation of the Commerce Court's jurisdiction exclusively to railroad cases.

The second point of difference, however, is rather more interesting. Opponents of the bill charge that, inasmuch as one of its expressed purposes is to secure an expert tribunal to decide railroad cases, it is rather absurd to limit to five years the time to be spent by the respective judges in the court, and to make them ineligible for a year after their periods of service have expired. Can we go further and say that this temporary tenure of office by the judges changes the character of the tribunal itself, and transforms it from a constitutional to a legislative court?

The distinction between the two classes of courts is well recognized in constitutional law. It was first announced by Chief Justice Marshall in *American Ins. Co. v. 356 Bales of cotton*, 1 Pet. 511 (1828), and has been many times discussed since that time, under varying circumstances. The cases in the Supreme Court are collected and commented upon in *McAllister v. United States*, 141 U. S. 174 (1891). In all of them the test principally

relied upon to distinguish the constitutional from the non-constitutional court is the judge's tenure of office: service during good behavior, stated compensation that may not be diminished during his term of office, and removal only after impeachment, being regarded as essential to the existence of a constitutional court. The only other element is that mentioned in *Gordon v. United States*, 2 Wallace 561 (1865), as characteristic of every judicial body, namely, the immunity of its orders from revision by an executive department.

Now it is true that the judges of the Court of Commerce hold judicial office during good behavior. It is equally true that they sit in that court for limited periods only. Hence the precise question arises, does the constitutional requirement apply to his tenure of office in the particular court to which a judge is appointed, or is it sufficient for him to be invested with general judicial authority for life without regard to the court in which it is to be exercised?

This question is not free from difficulty, and receives little light from the decided cases for the reason already stated, that a special tribunal such as the Court of Commerce has been heretofore unknown to the law. There is, undoubtedly, a considerable difference between the powers and duties of a judge of the Court of Commerce and those of an ordinary circuit judge. Hence it can be seriously urged that when a judge of the Commerce Court is obliged to relinquish his duties and powers as such and to take his place in another court where the powers and duties are different, he is in effect being deprived of his former office. The converse of this proposition was maintained by Senator Bacon, of Georgia, in a speech delivered in the Senate on June 3, 1910, in which he attacked the bill as unconstitutional for the reason that in transferring circuit judges to this new and different court for periods of five years, it would similarly deprive them of their offices during that period, and thus nullify the life tenure guaranty of the Constitution. To meet the argument drawn from the present law directing assignments of circuit or district judges to circuit and district courts of other districts, and to the circuit court of appeals, Senator Bacon pointed out that

the powers which an assigned judge exercises in these courts are still those of a circuit or a district judge. "His powers are just the same; his duties are just the same; his emoluments are just the same; his privileges and his rights are just the same. In other words, he is still, without interruption a circuit judge of the United States. In the same way, when a district judge is transferred from one district to the other, he in no manner is abridged in his rights and his privileges and his tenure of office as a district judge." But on the other hand, "when he is removed as a judge of the circuit court he ceases to be, for the time, a judge of any circuit court in the United States, and he ceases to exercise any of the powers of a judge of the circuit court of the United States."

This proposition, if pushed to its logical conclusion, would seem to identify the "powers and duties" of a circuit judge with his "office." It in effect guarantees to him the continuance of the powers and duties vested in the circuit courts at the time he happened to be appointed, although the greater number of those powers and duties are of statutory origin only. It would prevent Congress from changing the organization of the inferior federal courts during the lifetime of any of the judges appointed to office during its existence. It would really stand in the way of any addition to or subtraction from the jurisdiction of such courts as it existed at the time their judges were appointed. Surely the constitutional right of a judge to life tenure of office cannot have been intended so to hamper the power of Congress to "ordain and establish" inferior federal courts. Yet this conclusion seems immediately to follow from Senator Bacon's argument, that the circuit judges are in effect deprived of their offices solely because for five years they are forbidden to exercise their powers as circuit judges. The same result *pro tanto* would follow from an act in any degree curtailing or changing their present powers.

The constitutional guaranties attached to the judicial office are primarily for the benefit of the nation and not of the judges themselves. They are designed to secure an independent judiciary. They should not be unduly extended beyond the point essential to the effectuation of this general purpose. They should

not be allowed to invest the judges with purely personal privileges that will unnecessarily stand in the way of such reforms and changes in the judicial system as Congress may deem to be expedient. The Constitution never intended any such result. Now, the present law will lessen neither the independence nor the dignity of the judges assigned to the Commerce Court. Their emoluments, powers, and influence are essentially the same. It is of course conceivable that an individual judge might prefer to stay at home and exercise a general rather than a special jurisdiction, but this is immaterial. So long as his fundamental rights are not interfered with; so long as he retains ample power to hear and determine cases within the special jurisdiction assigned him under the usual forms of law, to enforce orderly procedure, and to execute judgments of the court by adequate judicial process, subject to no revision or control save by appeal to a higher court—so long are the substantial requirements of the Constitution complied with. In other words, it is necessary only that the judge be allowed to retain his judicial office in general, with his dignities, independence, and powers substantially unimpaired; and inasmuch as these are not affected either by a circuit judge's transfer to the Commerce Court, or by the transfer of a judge of the Commerce Court to the circuit court, it would appear that the new law is perfectly constitutional in this particular, however unwise might be its policy.

Much of the opposition manifested toward the court feature of the present bill was based upon the belief that a special tribunal for the trial of railway cases was wholly unnecessary on account of the small number of cases which it would be called upon to decide. Thus, the minority members of the House Committee on Interstate Commerce state in their report: "It is undoubtedly true if certain provisions of this bill were eliminated the Commerce Court would be stripped largely of its proposed work. There is no necessity for this Commerce Court; and the testimony of two of the Commissioners who appeared before the Committee goes to clearly indicate that if the court is established it will be without sufficient business to occupy its time."

The provision referred to in the first part of the above state-

ment is Section 12 of the House bill as amended in committee, which section also appears in the Senate bill as reported. This section provided, in effect, that no interstate carrier should acquire any interest, direct or indirect, in the capital stock, property, or management of "any railroad, or water line which is directly and substantially competitive with that of such first-named corporation;" and that any carrier desiring to acquire any interest in the stock or to lease or purchase the property of another must file a petition in the Commerce Court setting forth the contract for the proposed acquisition and asking for an adjudication as to whether or not it violates this section, which adjudication "shall have the ordinary effect of judgments as an estoppel between the parties."

If this section had been enacted into law, it would doubtless have provided many cases for the Commerce Court to determine. But the opposition it encountered is not surprising. The proceeding contemplated was certainly "a novel kind of law suit," inasmuch as the Court of Commerce is authorized and directed to "hear and decide cases before the transaction out of which they arise takes place." (Report of Minority, Senate Committee, p. 26.) This, of course, is contrary to all the traditions of our judiciary. In addition, the bill as originally introduced into both houses, and as reported back to the Senate, contained this further clause: "In making the determination herein provided for, the court shall take into consideration the effect of such proposed acquisition upon the due observance and effective enforcement of all the laws of the United States, and the relative importance of any benefit to the public interest and of any effect upon competition resulting from such acquisition."

This language, it was argued in the report of the minority members of the Senate Committee, apparently confers upon the Commerce Court the power to disregard existing law in arriving at its decisions as to the legality of mergers, if it believes "that upon the whole the contemplated transaction will be of benefit to the public interest." The report continues: "To merely state such a doctrine is to pronounce its severest condemnation. It is manifest that the attempt to bestow such jurisdiction upon a

court is an attempt to grant the court legislative power; and if it could be done, it would violate the most cherished and the most sacred principles of representative government." These and similar considerations led to the elimination of this last-mentioned clause by the House Committee on Interstate Commerce and resulted finally in the defeat of the entire section.

As a result of this action, the jurisdiction of the Commerce Court is confined to the matters enumerated in Section 1 of the bill, to wit: . . . "The jurisdiction now possessed by circuit courts of the United States and the judges thereof over all cases of the following kinds:

"First: All cases for the enforcement, otherwise than by adjudication and collection of a forfeiture or penalty or by infliction of criminal punishment, of any order of the Interstate Commerce Commission other than for the payment of money.

"Second: Cases brought to enjoin, set aside, annul, or suspend in whole or in part any order of the Interstate Commerce Commission.

"Third: Such cases as by Section Three of the Act entitled 'An Act to further regulate commerce with foreign nations and among the States,' approved February nineteenth, nineteen hundred and three, are authorized to be maintained in a circuit court of the United States.

"Fourth: All such mandamus proceedings as under the provisions of Section Twenty or Section Twenty-three of the Act entitled 'An Act to regulate commerce,' approved February fourth, eighteen hundred and eighty-seven, as amended, are authorized to be maintained in a circuit court of the United States."

Of these, the most important are the "suits to enjoin, set aside, annul or suspend in whole or in part any order of the Interstate Commerce Commission." This language is taken from Section 16 of the Hepburn Act of 1906, and assumes to vest in the Commerce Court the jurisdiction there conferred upon the circuit courts to review orders of the Commission passed in pursuance of the powers thereby granted to it. In order that there might be no mistake as to the extent of this court review, and also to put the seal of legislative approval upon the presently to be

discussed "Car Distribution Case," decided by the Supreme Court shortly after the introduction of the bill into Congress, the proviso was inserted that "Nothing in this act shall be construed as enlarging the jurisdiction now possessed by the circuit courts of the United States or the judges thereof, that is hereby transferred to and vested in the Commerce Court." This removes all doubt as to the intention of Congress to preserve unchanged the mode and extent of review exercisable over orders of the Interstate Commerce Commission under existing law. What this jurisdiction is must be determined by reference to previous acts and decisions.

Until the Hepburn act of 1906 was passed, the problem of a court review was not very pressing for the reason that no order of the Interstate Commerce Commission could be put into effect otherwise than by application to the courts for the aid of their process. This Act, however, after expressly conferring upon the Commission the power to prescribe rates and regulations respecting transportation generally, also provided that all orders of the Commission, other than those for the payment of money, should take effect *proprio vigore* within such reasonable time, not exceeding thirty days, as might be prescribed by that body. It was conceded that this change in the law would render necessary provisions for subjecting these orders to some manner of review by the courts, but opinions differed as to what should be the scope of the court proceeding. A notable contest was thus precipitated between advocates of a broad and of a narrow court review, respectively; the former, principally the friends of the railroads, desiring a review of such orders as nearly as might be upon the merits, the latter wishing to confine the courts to a determination of the question whether the order complained of would operate to deprive the carriers of their constitutional rights. The result was to vest in the circuit courts unrestricted power to hear and determine all suits "against the Commission to enjoin, set aside, annul, or suspend any order or requirement of the Commission," etc. This outcome was at the time regarded as a complete victory for the "broad-review" faction. Senator Bailey, who led the opposition forces, in his speech of May 11, 1906,

complained that, "Every act, important or unimportant, affecting a property right, is by the express terms of this amendment submitted to the judgment of the court; and therein lies the difference between a broad review and a narrow review." This was the assumption upon which the lower federal courts proceeded until the case of the Interstate Commerce Commission v. Illinois Central R. R. Co. ("The Car Distribution Case") was decided by the Supreme Court—one of the most important railroad cases ever adjudicated by that tribunal.

The opinion in this case made it appear that the narrow review advocates in 1906 had won their point without being aware of it. The decision was handed down January 10, 1910—just three days after the transmission of President Taft's message to Congress recommending the creation of the Commerce Court. So profoundly does it affect the jurisdiction of that tribunal that it was freely charged in Congress that if the decision could have been foreseen, the new court would never have been urged at all, and that the court provision was kept in the bill solely to save the face of the Administration.

This case was instituted to set aside an order of the Interstate Commerce Commission directing certain railroads, during times when there should be not enough cars available to handle the entire output from certain bituminous coal mines, to allot to each mine its pro rata share of cars according to its capacity, and in making the allotment to count against each mine as part of its share the railroad company's own cars sent for the purpose of hauling away coal purchased by it for use on its own lines. This order was enjoined by the lower federal courts, and the Interstate Commerce Commission appealed. After stating the facts, and quoting Section 4 of the act of 1906 putting into effect the orders of the Interstate Commerce Commission without prior submission to the courts, the Supreme Court said that "it becomes necessary to determine the extent of the powers which courts may exert on the subject."

The court then continues: "Beyond controversy, in determining whether an order of the Commission shall be sustained or set aside, we must consider (a) all relevant questions of constitu-

tional power or right; (b) all pertinent questions as to whether the administrative order is within the scope of the delegated authority under which it purports to have been made; and (c) a proposition which we state independently, although in its essence it may be contained in the previous ones, viz., whether even although the order be in form within the delegated power, nevertheless it must be treated as not embraced therein, because the exertion of authority which is questioned has been manifested in such an unreasonable manner as to cause it in truth to be within the elementary rule that the substance, and not the shadow, determines the validity of the exercise of the power. . . .

Plain as it is that the powers just stated are of the essence of judicial authority, and which, therefore, may not be curtailed, and whose discharge may not be by us in a proper case avoided, it is equally plain that such perennial powers lend no support whatever to the proposition that we may, under the guise of exerting judicial power, usurp merely administrative functions by setting aside a lawful administrative order upon our conception as to whether the administrative power has been wisely exercised. Power to make the order, and not the mere expediency or wisdom of having made it, is the question." The court then goes on to inquire whether the Commission had the power to issue the order complained of; and upon deciding that it had, the court declined to review the case upon the merits, although it recognized that the order might well be subject to criticism and might lead to some inequality. Such objections, it said, "but assail the wisdom of Congress in conferring upon the Commission the power which has been lodged in that body to consider complaints as to violations of the statute, and to correct them if found to exist, or attack as crude or inexpedient the action of the Commission in performance of the administrative functions vested in it, and upon such assumption invoke the exercise of unwarranted judicial power to correct the assumed evils." Accordingly, it reversed the decree of the court below.

This decision is very important in its bearing upon the present bill, and upon future legislation vesting additional powers in the Interstate Commerce Commission. It expressly recognized

the constitutionality of such delegations of authority, and thereby answers one of the questions hotly contested in the debates upon the Act of 1906. It appears, as indicated, that the narrow review senators have all they could desire in this decision. Only authority and constitutional right can be questioned, says the court; and this is precisely what the narrow review senators contended for. It is true that the present case was not concerned with rates, but the principle is the same. Deprivation of lawful use of property amounts to deprivation of the property itself; and if limitations upon use will be stricken down only when so unreasonable as to amount to confiscation, prescribed monetary returns thereon should be subjected to the same test. In either case, the court determines only the limit of confiscation, not reasonableness. In this respect, the Interstate Commerce Commission stands in the same position with Congress itself, inasmuch as its acts are invested with the force of law by the prerogative of Congress, not its own; and the same limit to the right of judicial review should be observed with reference to its acts as with reference to the acts of Congress itself.

Two Supreme Court decisions subsequent to the Illinois Central Case possess considerable interest in view of the principles there announced.

In *Interstate Commerce Commission v. Northern Pacific R. Co.*, decided March 7, 1910, the court had before it an order of the Commission attempting to establish a through route and joint rates between eastern points and points on the Northern Pacific Railway between Portland and Seattle. There was already in existence at the time a through route between the points in question, but many travelers preferred and requested a more southerly route. In the Act of 1906, the Commission was given the power to establish through routes and joint rates when "no reasonable or satisfactory through route exists." The Supreme Court said: "It is urged that this condition is addressed only to the opinion of the Commission, and cannot be reëxamined by the courts as a jurisdictional fact. The difficulty of distinguishing between a rule of law for the guidance of a court and a limit set to its power is sometimes considerable. Words that might seem

to concern jurisdiction may be read as simply imposing a rule of decision, and often will be read in that way when dealing with a court of general powers. . . . But even in such a case there may be a difference of opinion, and when we are dealing with an administrative order that seriously affects property rights, and does so by way rather of fiat than of adjudication, there seems to be no reason for not taking the proviso of the statute in its natural sense. We are of opinion, then, that the Commission had no power to make the order if a reasonable and satisfactory through route already existed, and that the existence of such a route may be inquired into by the courts. How far the courts should go in that inquiry we need not now decide. No doubt, in complex and delicate cases great weight, at least, would be attached to the judgment of the Commission. But in the present instance there is no room for difference as to the facts, and the majority of the Commission plainly could not and would not have made the declaration in their order that there was no such through route, but for a view of the law upon which this court must pass." The court then examines the facts, and finds an undoubted preference for two through routes, but adds: "It appears to us that these grounds do not justify the order. The most that can be said of them is that they are reasons for desiring a second through route, but they are not reasons warranting the declaration that 'no reasonable or satisfactory through route exists.' Obviously, that is not true, except by an artificial use of words. It cannot be said that there is no such route, because the public would prefer two. The condition in the statute is not to be trifled away. Except in case of a need such as the statute implied, the injustice pointed out by the chairman in his dissent is not permitted by law." Accordingly, the decree of the lower court enjoining the Commission's order was unanimously affirmed.

This decision was not regarded by the court as overruling the "Car Distribution Case." Indeed, the latter is cited in support of it. The court apparently means to say nothing more than that it will not always treat the finding of the Commission as conclusive as to the existence of facts necessary to confer jurisdiction upon it to act in a particular case. Of course, if pushed to its

logical conclusion this holding would enable the court to review the Commission's order upon the merits in almost every case. Thus, it might be argued that since the Commission may alter a rate or an existing practice only in case the latter is unreasonable, unjust, or discriminatory, it follows that unless the rate or practice complained of does in fact exhibit these qualities, the Commission has no jurisdiction to change it. But if the court is to determine for itself the existence of these necessary jurisdictional facts, the court is of necessity led to review the Commission's order largely upon the merits. This difficulty is recognized by the court in the above case when it says it need not now decide how far it may go in its inquiry as to the existence of jurisdictional facts. It held there that their non-existence was so obvious that the court could plainly see that the Commission was exceeding its authority. So although it may be laid down generally that the decision of the Commission as to the existence of jurisdictional facts will not be reviewed unless plainly erroneous, it is for the court to say when the error is sufficiently plain to call for judicial correction. Thus, in spite of the apparently wide powers recognized by the Car Distribution Case, the effect of the later case will be to confer upon the courts a wide power of review should they see fit to exercise it.

We may note with interest that the language of the Hepburn act upon which the case just discussed was based has been omitted from the new railroad bill, so that the Commission's power to establish through routes is no longer limited by the express proviso that existing through routes shall be as a fact unreasonable or unsatisfactory.

The latest of the Supreme Court decisions would seem to promise a continuance of the court's disposition to allow the Commission a rather extensive field of uncontrolled action. This is the case of *Interstate Commerce Commission v. Chicago, Rock Island & Pacific Ry. Company et al.*, decided May 31, 1910, the last day of the last term of Court. There had been complaints about certain through rates from the Atlantic seaboard to Kansas City, St. Joseph and Omaha, cities on the Missouri River. Upon investigation, the Commission found that the through

rates were made up of two parts: (a) the rates from points of origin to points of crossing at the Mississippi River, and (b) the local rates from these points of crossing to the Missouri River cities. The Commission decided that the through rate as a whole was too high because the latter constituent was unreasonable, and, accordingly, made an order reducing it very materially, while leaving unchanged the rate from points of origin to the Mississippi River. In attacking this order, the Western roads charged, among other things, that the purpose of the Commission was not so much to reduce unreasonable rates as to protect the Missouri River cities from competition of cities in the Central Traffic territory (the territory west of Buffalo, Pittsburg, and Parkersburg and east of the Mississippi River). This order, consequently, involved the assertion of a power on the part of the Commission "artificially to apportion out the country into zones tributary to given trade centers, to be predetermined by the Commission, and non-tributary to others." The lower federal court confined its opinion to this point, saying that the question "was not one of fact but one of power; it is not whether by the application of correct principles, a given rate had been decided to be unreasonable,—but whether the principles applied are within the power of the Commission."

The Supreme Court intimated that it would be an abuse of power for the Commission to raise or lower rates for the purposes above outlined. At the same time, the power of the Commission to reduce rates that are in themselves unreasonable was expressly recognized, although changes in rates will incidentally alter areas of competition, and affect trade conditions generally. All these are factors that must be considered in fixing a rate; but still, if the Commission is proceeding primarily to adjust rates in themselves unreasonable, its action is not rendered invalid by incidental effects upon trade conditions. The court then examined the Commission's action in this case, and concluded that there was not sufficient evidence to show that its action had been determined by the reasons found by the lower court. Hence, the Commission's order was held to be within its power, and could not be judicially reviewed upon the merits. As to the question

whether the rate fixed was unreasonable, the court said: "Such decision, we have said with tiresome repetition, is peculiarly the province of the Commission to make, and that its findings are fortified by presumptions of truth, 'due to the judgments of a tribunal appointed by law and informed by experience.' *Illinois Central R. R. Company v. Interstate Commerce Commission*, 206 U. S. 454." Here there was no evidence that the rates fixed will not yield to the carriers an "ample net profit," so the reduction "is neither directly nor indirectly obnoxious to the charge of taking private property without just compensation." Accordingly the judgment was reversed. Three justices dissented because they believed the lower court correct in its view of the purpose of the Commission's order.

Here, then, the validity of the delegation to the Commission of the power to fix railroad rates is recognized by the Supreme Court in a case involving the actual exercise of that power; and the limit of court review marked out in the "Car Distribution Case" is observed in reference to its scope. Beside determining these important constitutional questions, therefore, this latest decision appears to fortify the views of those persons who doubt the necessity of the Commerce Court. The work which it will be called upon to perform could be equally well left with the existing courts, so that whatever be the juridical character of the new tribunal, its creation is hardly justified by any existing exigency of practice.

NOTES ON CURRENT LEGISLATION

CONDUCTED BY HORACE E. FLACK

Conservation: Rhode Island January Session Adjourned. Aside from local items and appropriations the important business of the session consisted of an act whereby a state conservation commission was created. The commissioner of industrial statistics, the director of the Rhode Island agricultural experiment station, the secretary of the state board of agriculture, the commissioner of forestry and the secretary of the metropolitan park commission of Providence Plantations, all *ex-officio* and their successors in office, comprise this commission. It has general supervision and oversight of all matters pertaining to the conservation of the natural resources of the state, including the natural resources survey, established in 1909. It acts in an advisory capacity with reference to all undertakings of a kindred nature in progress at the present time or which may hereafter be projected. It is given authority to cooperate with similar commissions of other states and with the departments of the United States government with which it may have occasion to enter into negotiations whenever it may deem it advisable.

Part of the work of this commission is to prepare a census of the idle and unproductive farm properties and other lands in the state including so called "abandoned farms," sprout-land, swamp-land, waste land, marshes, meadows, rocky, stony, hilly and barren land and embracing all territory of the state that is unimproved, unworked or at present yielding no returns or products of commercial value, whatever the character of the present growth thereon or the nature of topographical formation. Among other items the area, location and ownership are to be noted, the topography, sources of water supply, character of the soil, the facilities and means for transportation, liability to frost, condition of the roads or other approaches, distance from market or commercial centers and authentic information, based upon a scientific analysis of the soil, rocks, or other components, as to the purposes for which such lands can be most profitably utilized. Three thousand dollars has been appropriated to defray the necessary expenses of compiling such a census, but the members of this commission serve without compensation.

A report is scheduled for the January session, 1911, which will cover the result of the work in as complete a form as possible, including a compiled list of separate properties of the character above described, with all the information obtainable pertaining to each, together with such recommendations as the commission may deem it advisable to make.

GRACE SHERWOOD.

Education: Rural School Supervision in New York. New York passed an amendment to the education law during the session of 1910, which will work decided changes in the supervision of common schools in the rural districts. Abolishing the office of school commissioner, it creates in place of it the office of district superintendent of schools. Provision is made for dividing of territory outside of cities and school districts of 5000 population or more which employ a superintendent of schools, into supervisory districts. The number of such districts is designated and varies from one to eight to a county. The appointment of the superintendents of these districts is vested in the school directors of the several towns composing a district. The directors two for each town, are elected at the general election. Of the first two elected, one serves for a term of three years and one for five years and at the expiration of their terms, their successors serve for a term of five years. The directors of a district constitute a board and have for their sole duties the election, by majority vote, of a district superintendent to serve for five years and the filling of vacancies in the office of district superintendent, which may occur under certain prescribed conditions. School directors are entitled to \$2 per day for each day's service and all necessary traveling expenses. The right of removing a district superintendent from office rests with the commissioner of education, as also does the payment in monthly payments of his salary of \$1200 a year and the amount allowed for expense shall not exceed \$300 a year. The commissioner of education may withhold all or part of the salary or sum for expense, if he is satisfied that the superintendent is neglecting his duties. For an increase of salary, however, the majority vote of the supervisors of the towns in the district for the county supervisors to levy the amount by a tax on the towns concerned, is necessary. Men or women over twenty-one years of age, citizens of the United States, residents of New York, residents, when they take office, of the county containing the district, who are authorized to teach in any of the public schools of the state, and have passed an examination in supervision of

courses of study in agriculture, are eligible to the office of district superintendent. A district superintendent must not be interested in certain businesses, must not receive rewards and must not engage in any other profession or occupation. He is given full supervisory powers over the schools of his district. Among other duties, he must establish the boundaries of the school districts in his supervisory district, conduct institutes, inspect training classes in the district, advise and counsel trustees and other school officers, direct trustees to make alterations and repairs in the interests of public health and comfort, not to exceed \$200 a year and changes in school furniture not to exceed \$100 a year. The district superintendent must make annual and other required reports to the commissioner of education and is subject to all times to the rules and regulations of the commissioner of education.

ETHEL CLELAND.

Employer's Liability. On May 24, 1910, Governor Hughes approved an act providing a system of compensation for injuries. This law is an amendment to the labor law and went into effect September 1st of this year. Its principal features are a statement of the conditions under which the employer is liable to the employee and the plan of agreement which is proposed to be submitted for the present doubtful one of resort to the courts.

The following are the cases where the employer is to be held liable for injuries received by the employee:

1. Where the injury is due to a defect in the condition of the plant or machinery "which arose from or had not been discovered or remedied owing to the negligence of the employer or of any person in the service of the employer and intrusted by him with the duty of seeing that the ways, works, machinery, or plant, were in proper condition."

2. Where the injury was due to the negligence of any one in the service of the employer intrusted with any superintendence or with any authority to direct, control or command any employee in the performance of the duty of such employee.

In either of the above bases, the employee (or his executor or administrator in case he is killed) shall have the same right of compensation and remedies against the employer as if he "had not been an employee of nor in the service of the employer nor employed in his work."

Notice of action for recovery under this act must be given to the employer within 120 days and the action must be commenced within one year. The act further defines what is to be regarded as contributory

negligence and the assumption of risks. An employee shall be presumed to have assented to the necessary risks of the occupation upon which he enters and no others. The necessary risks of the occupation shall include those only which are inherent in the nature of the business which remain after the employer has exercised due care in providing for the safety of his employees, and has complied with the laws affecting or regulating such business for the greater safety of the employees. "In an action brought to recover damages for personal injury or for death resulting therefrom received after this act takes effect, owing to any cause, including open and visible defects, for which the employer would be liable but for the hitherto available defense of assumption of risk by the employee, the fact that the employee continued in the service of the employer in the same place and course of employment after the discovery by such employee, or after he had been informed of the danger of personal injury therefrom shall not be, as a matter of fact or as matter of law, an assumption of the risk of injury therefrom, but an employee, or his legal representative, shall not be entitled under this article to any right of compensation or remedy against the employer in any case where such employee knew of the defect or negligence which caused the injury and failed, within a reasonable time, to give, or cause to be given, information thereof to the employer, or to some person superior to himself in the service of the employer, or who had intrusted to him some superintendence, unless it shall appear on the trial that such defect or negligence was known to such employer, or superior person, prior to such injuries to the employee; or unless such defect could have been discovered by such employer by reasonable and proper care, tests or inspection." The burden of proof as to contributory negligence is made to fall upon the employer.

If the employer and employee agree in writing to the compensation plan explained below, such agreement being properly acknowledged and filed with the county clerk, becomes binding on both parties until canceled in the manner prescribed by the act. Each employer who signs such an agreement is also required to file a statement with the Commissioner of Labor within 30 days, giving the wages, date of agreement, etc. Under the compensation plan the employee has no right of action against the employer for injury, under any statute or at common law, save under the plan so assented to, except where the injury is caused in whole or in part by the failure of the employer to obey a valid order made by the Commissioner of Labor or other public authority authorized to require the employer to safeguard his employees, or where such

injury is caused by the serious or wilful misconduct of the employer. In such exceptional cases, the employee does not lose any right of action which he has at common law or by statute by his consent to the plan, provided he commences action before accepting any benefit under such plan.

Under the plan the employer is not liable for any injury which does not disable the employee for at least two weeks from earning full wages at the work at which he was employed, nor is he liable for any injury caused by the serious and wilful misconduct of the employee himself.

The amount of compensation provided for under the agreement or compensation plan is as follows:

1. In case of death:

(a) If a widow or next of kin at time of death be wholly dependent on his earnings, a sum equal to 1,200 times his daily earnings at time of accident, but not exceeding \$3,000.

(b) If widow or next of kin be only partly dependent upon his earnings, then such sum (not exceeding \$3,000) as may be determined to be reasonable and proportionate to the injury.

(c) If he leaves no widow or next of kin, the reasonable expenses of medical attendance and burial, not exceeding \$100.

2. In case of total or partial incapacity for work, a weekly payment commencing at the end of the second week and continuing during incapacity and not exceeding 50 per cent of his average weekly earnings when at work on full time during the preceding year.

In case of partial incapacity, the weekly payment shall in no case exceed the difference between the amount of his average weekly earnings before the accident and the average amount which he is earning or is able to earn in some suitable employment after the accident, but shall amount to one-half of such difference. The weekly payment shall in no case exceed \$10 or extend over more than eight years from the date of the accident.

Any question of law or fact arising in regard to the application of the plan in determining the compensation must be determined by agreement or by arbitration as provided in the code of civil procedure, or by action of law as provided in the act itself. In case of default on the part of the employer in any of his obligations under the plan, the action on the part of the employee is to be conducted in the same manner as an action at law for the recovery of damages for breach of a written contract. The judgment in such action shall be for a lump sum equal to the amount of the payments then due and prospectively due under the

plan. Any one entitled to weekly payments has the same preferential claim therefor against the assets of the employer as now allowed by law for unpaid wages or personal services.

The agreement to the plan may be canceled on sixty days' notice in writing from either party to the other. Each employer of labor who accepts the plan with any of his employees is required to submit a report on January 1, 1911, and annually thereafter, and at such other times as the Commissioner of Labor may require, giving all amounts paid under such plan to injured employees.

Three states (New York, Wisconsin and Minnesota) had prior to this year authorized the appointment of commissions to investigate the subject of employer's liability and workingmen's insurance. The New York Commission submitted its first report in March of this year. It is but proper to say that the act described above was one of the bills or plans as recommended by the commission. Two other states, Ohio and New Jersey, have this year passed resolutions for the appointment of commissions to investigate this subject. Each commission is required to report at the next session of the legislature, together with such bill or bills as are deemed necessary or advisable by the commission. The Ohio commission is to consist of five persons, to be appointed by the governor, two of whom shall be representatives of the employers of labor, two representatives of labor, and one a lawyer. The New Jersey commission is to consist of six members, four of whom are to be appointed by the governor and one each by the president of the senate and the speaker of the house. The governor is required to appoint two who are representatives of the labor interests and two who are representatives of the employers' interest.

H. E. F.

Immigration: Legislation in New York. A 1910 amendment to the New York labor law creates a new bureau in the department of labor, to be known as the bureau of industries and immigration, which is under the immediate charge of a chief investigator, but subject to the supervision and direction of the commissioner of labor. The aim of this new bureau is to keep in touch as far as possible with all aliens arriving or already in the state. The work of the bureau is carried on by special investigators appointed by the commissioner of labor, not to exceed twelve in number and not more than two to be women. The salaries of these investigators are of two grades, the first grade \$1200 a year and the second, \$1500 a year. By means of information collected con-

cerning aliens and data relative to the conditions and needs of the various forms of industrial and agricultural labor throughout the state, the supply and quality of the labor of aliens can be regulated in some degree in accordance with the demand. The commissioner of labor is required to give lists of alien children of school age to the proper authorities to aid in the enforcement of the compulsory school attendance law. Through the coöperation of the commissioner of labor with the various boards of education existing in the state, both minor and adult aliens may be given opportunities for instruction in the English language, duties and rights of citizenship and the fundamental principles of the American system of government. Labor camps, employment and contract agencies, institutions dealing with various classes of aliens, conditions at docks, railroad stations, etc., are subject to inspection by the labor commissioner and the investigators he appoints. Also, he has power to investigate such questions as deportation, private bankers in their dealings with aliens, frauds, extortions and the general social conditions of aliens and report the results of his investigations to the proper authorities. Employment agencies, with certain exceptions, are required to register with the commissioner of labor and make an annual report to him. While the powers of the bureau of industries and immigration are limited almost entirely to investigating, three other laws which were also passed at the last session deal directly with certain frauds imposed upon aliens. Two are amendments to the business law. One of these protects aliens by providing a general system of license of all private bankers by the state comptroller and the other by providing a similar system of license of ticket agents of railroads and steamship companies. The third is an amendment to the penal law and is directed against frauds practised on aliens by notaries public and commissioners of deeds or persons posing as such officers. For all these laws dealing with the different phases of the immigration problem,—labor of aliens, their economic and social conditions and the frauds practised upon them,—the special commission of immigration appointed by Governor Hughes in 1908, is responsible.

ETHEL CLELAND.

Interstate Commerce. The republican platform of 1908 approved the railroad rate law passed under the Roosevelt administration and declared for its strict enforcement. Two new features were proposed, namely, that railroads be permitted to make traffic agreements subject to the approval of the interstate Commerce Commission and that leg-

islation be passed to prevent the future overissue of stocks and bonds by interstate carriers.

The democratic platform declared for strict control of railroads by the Interstate Commerce Commission, and recommended that the commission be given power to proceed on its own initiative to investigate any rate and adjust any proposed increase in rates, before the same should take effect. Valuation of railroad property and approval of traffic agreements by the Interstate Commerce Commission were favored and also the prevention of watered stock.

President Taft in a special message recommended all of the foregoing declarations, except the valuation of railroads. Other specific recommendations by the president were; to establish a court of commerce to pass upon certain appeals from the Interstate Commerce Commission; to require the quotation to an intending shipper in writing by the carrier, of the legal rate for carriage; to permit the shipper to designate one of two or more through routes for his shipment; and to prevent railroad companies from acquiring any interest of any kind in a competing carrier, except that companies owning not less than one-half of a capital stock might acquire the remainder of the stock.

A bill embodying the President's recommendation was prepared by the Attorney-General and presented to both houses of Congress. As finally enacted, however, the law differed substantially from the presidential project.

The new law creates a commerce court with exclusive jurisdiction in the following kinds:

First. All cases for the enforcement other than by adjudication and collection of a forfeiture or penalty or by infliction of criminal punishment, of any order of the Interstate Commerce Commission other than for the payment of money.

Second. Cases brought to enjoin, set aside, annul or suspend in whole or in part any order of the Interstate Commerce Commission.

Third. Cases relating to the charges of rebating or discrimination made by the Interstate Commerce Commission under the Elkins act.

Fourth. All cases of mandamus to require the furnishing of cars or performing service under section 23 of the Interstate Commerce Act.

The court is to be composed of five judges designated from among the circuit judges by the chief justice of the Supreme Court for five years except that in the first instance five new circuit judges are to be named by the president and these are to act as members of the new court for one, two, three, four and five years respectively.

The court is given all of the powers conferred upon circuit courts within its own jurisdiction. Appeals may be taken to the Supreme Court by the aggrieved party within thirty days but such appeal will not stay the judgment of the commerce court unless the supreme court or the judge so directs.

An appeal may be taken from injunctions granted by the commerce court restraining any order of the Interstate Commerce Commission if taken within thirty days. Appeals are given priority in the Supreme Court over all causes except criminal causes.

The original bill provided that all cases before the commerce court and all appeals from the commerce court should be solely in charge of the Attorney-General. The Senate amended this to permit the attorneys of the Interstate Commerce Commission to coöperate and also to permit attorneys of interested parties to appear in such cases.

To facilitate the work of the court every common carrier is required to designate in writing an agent in the city of Washington upon whom process can be served.

The interstate commerce law was amended so as to apply to telegraph, telephone and cable companies, whether wire or wireless. Railroad companies are required to make reasonable regulations for the exchange, interchange and return of cars and to establish reasonable classifications of property for transportation, and practices affecting classifications, rates or tariffs, tickets, bills of lading and the manner of marking, packing and delivering of property for transportation and in relation to baggage.

The long and short haul clause of the interstate commerce law which prohibited an equal or a greater charge for a shorter than a longer distance over the same line in the same direction, the shorter being included within the longer distance, under substantially similar circumstances or conditions, was amended by striking out the words "under substantially similar conditions or circumstances," and by prohibiting a greater charge for a through route than the sum of the local rates. The commission may, however, permit a higher rate for a short haul under conditions to be determined by them.

The interpretation by the courts of the qualifying clause "under substantially similar circumstances and conditions," had rendered the original long and short haul clause practically useless. Under the new law the power to determine what constitutes a reasonable ground for charging an equal or a higher rate for a short than for a long haul is given to the commission.

Railroads which are in competition with water routes and which reduce rates between competitive points, are prohibited from restoring the old rates without the approval of the Interstate Commerce Commission.

The law empowers the Interstate Commerce Commission to proceed upon its own initiative to investigate any rate or discriminatory practice as well as upon the complaint of an individual or organization, and may establish through routes and joint classifications. Through routes may include carriage by electric or interurban companies which are authorized to carry freight and also with water routes. The shipper is allowed to select the through route for his shipment.

The most important provision in the interest of the public is the one permitting investigation of proposed increases in rates or changes in classification before the same take effect and permitting the commission to stay the effective date of such changes until an investigation of their reasonableness is made. The commission may proceed upon its own initiative or upon complaint, without answer or any formal pleading on the part of the carrier, to make such investigation. The burden of proof is placed on the carrier to show that any increase of rate proposed is reasonable. Preference is given to such cases over all other cases before the commission.

Interference by the federal courts in cases involving state statutes regulating carriers is limited by the new law which provides that no interlocutory injunction shall be issued by a single judge on the ground of the unconstitutionality of the statute. In all such cases three judges—one of whom must be a judge of the Supreme Court—shall sit and no injunction may be granted except on a majority vote after a hearing. Temporary restraining orders may be issued in cases where irreparable damage would be done but such an order can be in force only until the hearing and determination on the question of a permanent injunction. An appeal may be taken to the Supreme Court by the losing party.

In the matter of regulating the issue of stocks and bonds, Congress adopted a compromise course. The original draft contained three sections regulating the issue of securities. The House bill contained these sections slightly modified. The Senate struck the provisions out and the conference committee reported a section providing for an investigation of the subject by a commission to be appointed by the President. The size of the commission is to be determined by the President and also the compensation of the members, within an appropriation of twenty-five thousand dollars.

Penalties are provided for common carriers and their officers and agents who give any rebate or make any discrimination by any device whatever, and like penalties are prescribed for the receiver of the rebate or discrimination. Penalties are also provided for divulging information of a shipment to any one but the shipper or consignee.

The new law requires carriers to give a written statement of rates between any points on application by any person or company and penalizes failure or refusal to do so or any misstatement of the rate in writing.

Power is given to the commission to refuse to file any schedule which does not give notice of its effective date.

Some of the proposals which did not get into the enacted law were: legalizing pooling agreements; physical valuation of railroads; an analysis of classifications and tariffs every six months. The first two were in fact the only proposal of either political party which were not adopted. Physical valuation of railroads was passed by the House, defeated in the Senate and left out of the conference report. Legalizing pooling agreements under control of the Interstate Commerce Commission was provided for in the administration measure, but was defeated in the Senate. The provision for an analysis of classifications and tariffs was inserted by the Senate but was left out in the conference report. This would have enabled the commission to make the schedules filed with them intelligible by the careful analysis of statistical experts.

The law takes effect in sixty days except the provisions relating to investigations of proposed increases in rates and for an investigation of stock and bond issues which took effect on passage.

JOHN A. LAPP.

Old Age Pensions—French Act of 1910. One of the most important and far-reaching pieces of social legislation taken up by the French Chambers for many years has been under discussion during the past winter and finally passed early in April. France has now followed in the footsteps of Germany and Great Britain in providing for the necessities of her working people, or rather forcing them and their employers to make provision and then assisting them with a state allowance. The British Act of 1908 already described in this Review (February 1909, pp. 68-73) places the financial burden wholly on the imperial treasury, requiring no previous contributions by the receiver of a pension. The only conditions are that the man or woman shall have reached the age of 70, been a British subject for the previous twenty years, and have

no more than £31 10s. annual income. The amount of the weekly pension is fixed according to a sliding scale, varying according to the income of the recipient.

According to the German system inaugurated in 1889, the cost of insurance is met partly by the employers and partly by the employees with the addition of a state allowance. The recipient of an invalidity or old age pension must have paid the legal contributions for 200 weeks in case of invalidity or 1200 weeks in the case of old age, and must have become unable to earn a livelihood or have completed the seventieth year of life. The contributions of the employer are equal to those of the employee, and the Empire adds 50 marks annually to every pension granted. The premiums and the resultant pensions are graduated into five classes determined partly by the amount of the annual wages. The old age pension thus varies in amount from 110 marks to 230 marks a year, including the Imperial subsidy.

The French Old Age Pensions Act follows the general plan of the German rather than the British system. It applies to both sexes employed in industry, commerce, the liberal professions, agriculture, and domestic service, and to government employees both national and local, except those already eligible for civil or military pensions; but no person receiving an annual wage of over 3000 francs is included. Even those who later get as much as 3000 francs cease to be insured, though retaining the rights already acquired. All persons coming within the scope of the law are obliged to make contributions which must be duplicated by the employer, at the rate of nine francs a year for men, six francs for women, and four and one-half francs for minors under eighteen years of age. The government supplies each worker with a card on which the payments of employers and employed must be recorded by means of stamps bought from the government or the authorized societies or savings banks. The amount of the annuity to be paid is to be computed according to regular actuarial tables, and will depend on the total amount of premiums paid. To this annuity is added a state allowance of 60 francs a year at age 65, provided at least 30 annual payments have been made. If less than 30 and over 15 such payments have been made, the state allowance is one and one half francs for every year of such payments. A sliding scale is fixed making the state allowance higher for those who are over 45 years of age when the law takes effect, those between 64 and 65 receiving from the state an allowance of as much as 100 francs a year when pensioned. The normal age of retirement is thus 65; but a pension can be claimed by any one qualified after

he reaches 55, subject to a proportionate reduction of the state allowance.

The cases of persons who are over 65 years of age when the law goes into operation will be provided for by administrative regulation, but the amount of the state allowance can not be over 100 francs a year. If the insured dies before he can claim a pension, his children under sixteen will receive 50 francs a month for six months, if they are three or more in number; 50 francs a month for five months, if two in number; and 50 francs a month for four months, if only one. If a widow is left without children under sixteen, she will receive 50 francs a month for three months; but none of these accrue unless the deceased paid at least three-fifths of the payments required for an old age pension. If the insured is prematurely and permanently incapacitated from work, he can anticipate the pension, proportionately reduced according to the number of premiums he has paid, and the state will add up to 60 francs a year, providing the total annuity is never over 360 francs a year.

In framing the bill great pains have been taken not to interfere with the work of friendly or mutual aid societies. When approved by the government, these have the right to collect the contributions of their members under the pension scheme and will receive a government allowance as indemnity for their trouble. Persons who are buying a home or small field or garden are likewise allowed to apply their payments to that instead of the pension. Likewise when the annuity in course of acquisition exceeds 180 francs, the insured can after medical examination change it to a life insurance policy or can apply it to the purchase of a home which will become inalienable and unseizable. The pension scheme is to be administered by the minister of labor and a superior council in which senators, deputies, councillors of state, societies for mutual help, savings banks, employers, employees, and the institute of actuaries are to be represented. A great variety of institutions are named through which the insured may pay his premiums, and the investment of the funds is very carefully regulated. Employers and employees are penalized if they fail to affix the correct stamps to the card of each individual insured when the wages are paid.

One of the features of the law which occasioned much debate is that which provides that tenant farmers, métayers, artisans, and small employers who work alone or with one employee and the members of their own families living with them, can participate in the pension scheme if they desire. Métayers may pay from six to nine francs a year, and the owner of the land they till must pay a like amount. The other classes

may pay from nine to eighteen francs a year. Those whose premiums amount to eighteen francs a year (including the employer's share in the case of the *métayers*) receive the same state allowance as other workers unless the farmer owns land worth over 600 francs. The ministry at first excluded these classes from the application of the pension scheme, but later included them. Their inclusion was vigorously opposed on the ground that *métayers* are not in a position analogous to industrial employees, but are practically owners, and that the burden and complexity of requiring the landowner to pay for his *métayer's* pension would be too great.

Another fundamental question about which discussion turned was whether payment of premiums and consequent participation in the pensions should be made obligatory on the classes affected or merely optional. The bill as originally passed by the Chamber of Deputies made the payments obligatory, but a majority of the commission appointed by the Senate to study the problem long held out for the optional payments. It was urged that a pension scheme with optional payments has been very successful for the past fifteen years in Belgium, and with a far lower cost to the state than a compulsory payment system would entail. But the majority of the commission and later the Senate finally yielded and voted the measure with the compulsory payment feature. In fact some sort of a pension law had been promised so long that its passage was a political obligation not to be escaped. At the final division in the Senate only three votes were recorded against the bill and only twenty senators were absent; but it is noteworthy that a very considerable number of senators mounted the tribune to explain why they voted for the bill and pessimistically to disclaim all responsibility for its results.

The consequences of this law can hardly be foreseen at present. It certainly concerns vitally about seventeen million French men and women whom it assures of financial assistance after their working days are over. If they subscribe from the time they start on their careers, it is estimated that after they are 65 years of age, the men may receive as much as \$82.50 a year and the women as much as \$55.00 a year. It was urged that this is not sufficient, but the supporters of the law in the chambers hinted openly that this law is only provisional, that it is only the entering wedge, and that the pensions will later be increased. Other critics of the law deplore its passage because of the enormous expense it will entail to a government already in financial difficulties. Authoritative statistics show that since 1871 the govern-

ment of France has had deficits amounting to an aggregate total of twelve billion francs, usually artfully concealed in various ways, and the government had to face a deficit of 200 million francs in the budget for 1910. It is estimated that this law will cost the state at least an additional hundred million francs a year and the estimates are almost certain to be exceeded. The law will cause the piling up of enormous capital in the state treasury and will lead to a multiplication of officials already all too numerous in France. Will the growth of officialdom and official regulations and the assurance to the worker that the bureaucratic state will care for his old age choke out the initiative and individual activity without which no nation can prosper? The conservatives fear the creation of a new social, political, and financial organization—a formidable tool in the hands of the party in power; but the socialists rejoice in it. The outcome is yet to be seen, for the law does not go into effect till after provision is made for it in the budget of 1911.

CLARENCE PERKINS.

Primary Elections—Illinois. The experience of Illinois in her effort to secure a constitutional direct primary law has been one of exceptional political travail. Three General Assemblies, in two regular and two special sessions, have wrestled with this problem, and enacted four successive primary election laws in a period of five years. Three of these acts, passed in 1905, 1906 and 1908, respectively, were each in turn held unconstitutional by the state Supreme Court.¹ The Governor then officially requested the members of the Supreme Court to aid the General Assembly by redrafting the primary law of 1908, "so as to eliminate there from all unconstitutional features." But they firmly declined the task as being outside the judicial sphere. However, the opinions in the three cases decided really afforded a very fair outline on which to base a constitutional statute. Thus with negative, if not with positive, judicial guidance, the fourth law was enacted in March, 1910, to become effective the first of July following.

This last and present primary law is, in all its main features, merely a replica of that of 1908.² The single trial of the latter was not sufficient warrant for grave changes, and the constitutional flaws were in the technical details rather than the broad general principles of the law. The easily alterable provision for placing the names of candidates on the ballot

¹ Am. Pol. Sci. Rev., II, 271-72; III, 561-62.

² *Ibid*, II, 417-21.

in the order of the filing of nomination petitions is retained, notwithstanding the disgraceful scramble for first place that it inevitably causes. As a result of the first experience in voting upon candidates for United States senator the proviso "that the vote upon candidates for United States senator shall be had for the sole purpose of ascertaining the sentiment of the voters of the respective parties" has been amended by adding "in the *State as a whole* and *not* by senatorial districts."

To meet the constitutional objections of the Supreme Court the law was modified in two respects: first, the provisions for the registration of voters; second, those for the nomination of candidates for representative in the General Assembly. These were two of the points as to which the law of 1906 had been held invalid, and the requirements of the Constitution laid down by the court, but practically in vain. The court holds that a primary election is an "election" within the meaning of the state constitution, and hence must conform to all the constitutional guarantees safe-guarding regular elections. "A person possessing the other constitutional qualifications is only required to reside in the election district thirty days next preceding the election to entitle him to vote at said election, and if registration is a condition precedent to the right to vote, the law must afford him an opportunity to register within the period of thirty days before the election." Otherwise, the effect is "to add to the constitutional qualifications of voters and it is therefore invalid." The law of 1906 made no provision for registration within thirty days of an election, and the law of 1908, in seeking to remedy the defect made such provision *only* for those moving into the precinct since the last registration day, and *not* for those becoming voters by naturalization, attainment of majority, etc. Now at last the provision in the present law has been broadened so as to give *any* and *all* otherwise legal voters a chance to register within thirty days of the primary election and the constitutional molehill doubtless surmounted.

The second modification has to do with what is now recognized as the most serious problem in drafting a valid direct primary law for this state. The Constitution of Illinois is peculiar in its provision for minority representation in the lower house of the General Assembly by means of the cumulative vote. The state is divided into senatorial districts, each of which elects one senator and three representatives. Every elector is given three votes for representative which he may cast singly for three candidates, or cumulate, or "plump," on only one or equally between two. Under the ruling of the Supreme Court any primary election law infringing this right of the elector to cast three votes for one,

two, or three candidates for nomination for representative is invalid. By the law of 1906 each party was to nominate only one candidate in each district. Each elector was to have only one vote. Other nominations for representative, if any, were to be made by the senatorial district conventions. The law of 1908 provided that the senatorial district committees of each party should by resolution fix the number of candidates for representative to be nominated by their party, and file a copy of each resolution with the secretary of state and the clerk of every county in each district. But the elector was restricted to only one vote for each of as many candidates as his party was to nominate, despite his constitutional right, upheld by the Supreme Court, to cast three votes for one, two or three candidates at his option. The present law retains word for word the provision that the party committees are to fix the number of candidates each party is to nominate. But the first genuine attempt to conform to the Constitution is made by providing that, "In all primaries for the nomination of candidates for representative in the General Assembly each qualified primary elector may cast three votes for one candidate, or may distribute the same or equal parts thereof among two or three candidates, as he shall see fit."

Finally, lest even this solution of the problem might fail to run the gauntlet of the courts, and so endanger the validity of the entire primary election law, the parts dealing with the nomination of candidates for representative in the legislature were taken out of the main statute and embodied in a separate act to stand or fall by itself. One possible flaw in this "little" primary act is the provision that the party committees are to fix the number of candidates to be nominated by each party. But if called in question it will probably be upheld; for the Supreme Court made a very similar suggestion in one of its opinions,³ and in the last one declared that "if each party were required to nominate three candidates it would render nugatory the constitutional provision for minority representation."⁴

L. E. AYLSWORTH.

Probation and Juvenile Court Legislation. Twenty-five states in this country passed laws on probation and juvenile courts during 1909, such action being taken for the first time in Nevada, North Dakota, Oklahoma and South Dakota. Three states, Nevada, Oklahoma and South Dakota,

³ Rouse vs. Thompson, 228 Ill. 522.

⁴ People vs. Strossheim, 240 Ill. 297.

passed juvenile probation laws for the first time in 1909, and seven states, Colorado, Kansas, Minnesota, Nebraska, North Dakota, Pennsylvania and Wisconsin, authorized probation for the first time for adult offenders. The state of Maine, which had previously had probation only in one county and one city, enacted legislation making the system state-wide. Up to January 1, 1910, thirty-eight states, including the District of Columbia, had passed legislation on this subject. Twenty states now provide for probation among adults, and thirty-eight states for probation among children.

Two innovations in laws relating to the trial of juvenile and adult offenders are found in the Colorado laws of 1909. Since the passage of the original juvenile court law of Illinois in 1899, a number of states, including Colorado, have abolished criminal procedure in hearing cases against juvenile offenders, and have provided for the hearing of all cases against children in courts possessing chancery or equity jurisdiction. In Colorado, as in most other states having the equity procedure, the juvenile court has jurisdiction throughout the county. It is often inconvenient for children complained against, and for complainants and witnesses in the more remote parts of the county, to attend the juvenile court. As a result of efforts on the part of Judge Ben B. Lindsey of the Denver juvenile court an attempt has been made by chapter 158 of the Colorado laws of 1909 to remedy this difficulty arising from geographical conditions. This statute authorizes the juvenile court judge to appoint masters of discipline to hear cases against juvenile offenders in the outlying portions of the county. The masters of discipline are to direct the probation work among children under their jurisdiction. This is upon the theory that where the child cannot conveniently go to the juvenile court, the juvenile court should go to the child. The results of this legislation will be watched with interest by persons in other states.

The other innovation in Colorado was the passage of chapter 199 of the laws of 1909, providing that cases against adults charged with minor offenses, like those of juvenile offenders, may be tried by chancery procedure. The purpose of this legislation is to save defendants from the stigma of a criminal conviction, and to treat them not so much as offenders against the law, as unfortunates in need of the care and protection of the state. The wisdom of applying this procedure to adults can be determined only by actual experience.

ARTHUR W. TOWNE.

Taxation in Rhode Island. Rhode Island has, by law, an antiquated taxation system, ill-suited to meet the requirements of a rapidly increasing population. It is the general property tax, so-called, a uniform rate of taxation upon all kinds of property, from land, machinery, etc., to stocks, bonds, mortgages and investments. In spite of various amendments to the statutes, destined to reach the evasive intangible personalty, the revenue derived therefrom for a long time has been insufficient to keep the government machinery in good working order. To remedy this evil in 1909 a joint special committee on the taxation laws of the state was appointed. It reported March 1, 1910, after a most thorough and extensive investigation of taxation systems in other states as well as that of Rhode Island.

The recommendations of this committee briefly summarized are as follows: "The enactment of a law creating the office of state tax commissioner, with a salary not exceeding \$5,000 annually, providing the manner for his appointment for such term of years as will admit of an effective execution of his duties, and carrying substantial advisory and supervisory powers over local assessments.

"A law levying a state tax on collateral inheritances, with rates and exemptions approximating the provisions of the Massachusetts law. "A law imposing a state tax on domestic incorporated companies, which shall be assessed upon the capital stock of such corporations at the rate of 48 cents on each \$100 of the fair cash value of such stock and the funded and floating indebtedness of such corporations, less deductions for local taxation of realty and tangible personalty in this or other states, and taxed directly to the corporations.

"The separate listing of realty and personalty liable to the general property tax, under the headings of land, improvements, tangible personalty, and intangible personalty.

"The systematic revaluation of the ratable property of the state, at stated periods.

"A uniform date of assessment for all cities and towns.

"The taxation of tangible personal property in the city or town where such property is located.

"The elimination of debt exemptions from assessments upon all personal property except credits.

"Complete assessors' plats as a part of the public records in cities and towns.

"A law relieving intangible personal property from the burden of the general property tax rate, and establishing a rate of forty-eight cents

upon each one hundred dollars valuation of such property, thirty-nine cents thereof to the use of the city or town were assessed, and nine cents thereof to the use of the state.

"The taxation of real estate mortgages under the general provisions of the law recommended for intangible personal property, and at the same rate—forty-eight cents on each \$100."

Under separate headings in this report the subjects covered by these recommendations are taken up individually and extensively discussed. The report contains, also, in its appendix many tables, valuable for comparative purposes.

Two important taxation measures, drafted by the committee, have been introduced in the legislature. One is an act creating the office of tax commissioner. The governor, with the advice and consent of the senate, appoints this officer for a term of three years. His annual salary is \$5,000. His duties are to have general charge and control over the assessment of taxes, payable directly to the general treasurer, other than those paid by any city or town, except so far as such taxes are now assessed or fixed by special state officers or commissioners other than the general treasurer. All reports upon which any such tax is based, except those made to special state officers or commissioners, shall be made to the tax commissioner. In all cases in which he shall assess or determine the amount of any such tax he shall certify the amount to the general treasurer for collection. The commissioner or his deputy from time to time shall inspect the work of local assessors and advise with them as to action that will tend to produce uniformity in valuation and assessment throughout the state. Uniform blanks for assessment rolls, providing for the separate assessment of different classes of property in each town, are to be prepared under his jurisdiction. The tax commissioner shall make reports to the general assembly and shall be considered and consulted as an authority when the constitutionality or construction of any tax statute is questioned in any court proceedings.

This bill also provides for a state tax upon corporations in accordance with the committee's recommendation that a law be passed imposing such tax which shall be assessed upon the capital stock of corporations at the rate of 48 cents on each \$100 of the fair cash value of such stock and funded and floating indebtedness of such corporations, less deductions for local taxation of realty and tangible personalty in this or other states, and taxed directly to the corporations. Since a law fixing a corporation tax would necessitate the office of tax commissioner to value, assess and notify such corporations, these two measures have been combined in one act.

The other important bill is an act in amendment of the several chapters of the general laws concerning the revenue of the state and the taxation of property. It provides in detail for every other recommendation of the committee with the exception of the question of a uniform date of assessment for all cities and towns; of a law fixing a minimum wage for city and town assessors, and of a law levying a state tax on collateral inheritances.

It is doubtful whether either of these two important measures will be passed by this general assembly. The changes from the present statutes in some cases are so radical that several public hearings will be absolutely necessary before these bills can be brought before either branch of the legislature—and the sixty days session is nearly over.

If no law is passed, the joint special committee still remains in existence to investigate more fully the taxation and revenue problem, or to strengthen any weak points in its drafted bills that another year's research may bring to light.

GRACE SHERWOOD.

Tuberculosis: County Laboratories and County Tuberculosis Hospitals in New York. Under the New York act of 1908, which gives the board of supervisors of a county the power to establish county laboratories with a thoroughly trained and competent bacteriologist in charge, county laboratories have already been established in at least four counties, other counties are contemplating taking the step and still others have taken advantage of the provision of the law whereby the board of supervisors of a county which has not established a county laboratory and a county bacteriologist, may make a contract with a county or city which has a laboratory and a bacteriologist, for the performance of such services as the board of supervisors may deem necessary in the interests of public health.

This radical step in the direction of county aid to public health was followed in 1909 by the passage of an act for the establishment and maintenance of county hospitals for the care of persons suffering from tuberculosis. The board of supervisors of any county, may, by a majority vote establish such a tuberculosis hospital for which they shall appoint a board of managers, five in number, two of them to be physicians and their term of office to be for five years, with one term expiring annually. The board of managers appoints the superintendent, fixes salaries within the limits of the appropriations made by the board of supervisors, has general supervision, makes rules and regulations, maintains an effec-

tive inspection, holds meetings at least once a month at the hospital and an annual meeting prior to the meeting of the board of supervisors at which appropriations are to be considered, keeps records, certifies accounts and makes annual reports and recommendations to the board of supervisors. The superintendent, who shall not be a member of the board of managers and who shall be a graduate of an incorporated medical college with at least three years actual experience in practice, is the chief executive officer, under such bond as the board of managers may determine and subject to their rules and regulations. He equips the hospital suitably, supervises and controls records, accounts, buildings and internal affairs, maintains discipline, makes further rules and regulations, appoints and discharges resident officers and employees, causes records and accounts to be kept up from day to day and ready for the annual report, examines, receives, keeps record of, and discharges patients and collects and receives all money. Applications for admission are made on blanks furnished by the hospital and signed by a reputable physician. Patients who are able to pay in full or in part for hospital care are required to do so at the rate of the average cost per capita. Patients are also admitted from counties having no tuberculosis hospitals established, the cost of their maintenance paid either by the patient or the superintendent of the poor in the county in which the patient is a resident. The board of managers has access at all times to the hospital and its records, which are also subject to the inspection of duly authorized representatives of the state board of charities, state department of health, state charities aid association and board of supervisors of the county. Provision is made for tuberculosis hospitals already existing in connection with county almshouses to be subject to the requirements and enjoy the benefits of this law as though they had been established under it.

ETHEL CLELAND.

Uniform State Legislation. Powerful agencies are turning their attention to the promotion of uniform laws among the states. Results already obtained are significant of the possibilities in this movement which had a great national expression in the conference of the Civic Federation at Washington January 16, 1910.

The closer commercial relations of the people of the states are breaking down the needless restrictions which benefit no one, but hamper free industry. The frequent miscarriage of justice through petty differences in state laws has aroused thinking people to the evils of non-uniform

laws on formal matters, trade and commerce, and other affairs in which the interests of two or more states are mutual. This movement is one whose prime purpose is national unity.

The federal constitution made a division of power between the state and national governments in 1787. Except for changes by interpretation that division still stands. Those affairs upon which uniformity was deemed desirable were given into the power of the union. Interstate commerce, money, naturalization, bankruptcies, post office, weights and measures, patents, copyrights, war and the instruments of war were all considered proper subjects for uniform action and the powers relating thereto were given to congress. Today we are confronted with a vital need for uniform action on many other subjects. Experience has proven the futility of attempts to amend the constitution except under the pressure of great crises, hence relief must come if at all; through uniform legislation by the states.

The movement for uniform laws began with the organization of the American Bar Association. That body took up at once the problem of harmonizing conflicting laws of the different states and all through their work for more than a quarter of a century this purpose has been predominant. Their efforts brought about the establishment of the commissioners on uniform laws and much of the good work of that body has been promoted by their efforts.

The first official conference to promote uniform laws was held in 1892. A bill was introduced in the New York legislature of 1888 to provide for a commission to meet with commissioners from other states on uniform laws. A similar bill became a law two years later. Like action was taken by several states and seven states were represented at the first conference. At the second conference the following year twenty states were represented. The third had representation from thirty-two states. Today commissioners have been appointed from forty-eight states and territories including the Philippine Islands and the District of Columbia. At the conference in Detroit in July 1909, commissioners from thirty states were present.

The commissioners have proposed and submitted to the states five uniform commercial acts of great significance. The negotiable instruments act, approved by the conference in 1896, has already been adopted in thirty-eight states and territories. The warehouse receipts act, approved in 1906, has been adopted in eighteen states. The uniform sales act, approved in 1906, has received the sanction of six legislatures. At the session of 1909 two important acts were approved and submitted

to the states, viz: the stock transfer act and the bills of lading act. A uniform divorce act approved by the conference has been adopted in three states.

The conference has under consideration a uniform partnership act which is expected to be reported at the next session and a committee is working on a uniform incorporation act.

Other powerful unofficial agencies have been promoting uniform legislation, directly and indirectly.

Foremost of these agencies are the national associations of various kinds. The American Bar Association has been the leader in the general field. Others have confined themselves to particular lines. Thus, the American Bankers' Association promotes uniformity of laws relating to commercial paper and other subjects closely allied to their work; the American Automobile Association in its field promotes uniformity; the associations of wholesale men, credit men, oil producers, etc., bring their great influence to promote uniform laws especially relating to standards. In a slightly different way the associations of administrative officers have been accomplishing great things by their conferences. The National Association of Insurance Commissioners has been holding meetings for forty years and discussing the proper regulation of insurance. The bank commissioners meet annually and out of their conferences comes a tremendous force for uniform laws. The railroad commissioners of the states meet annually with the interstate commerce commission and thereby promote harmony in one of the most difficult fields and yet the field in which harmony is most desirable. Three years ago the attorneys general of the country met in a national conference which has now become an established function. The food and drug commissioners also meet in conference and have taken some positive steps toward harmonizing the laws under which they work. The bill prepared by them providing for sanitary regulation of food producing establishments was presented to the legislatures at the 1909 sessions and was adopted by several states. The pure food laws of the states are due largely to their work. The factory inspectors have been conferring together in a national meeting for twenty-three years. The latest and most significant movement of all is the conference of governors originally convened to consider conservation of natural resources and now continued in an annual conference.

Besides these national conferences there have been sectional conferences to discuss problems affecting neighboring states. The New England governors met in such a conference in 1908 to promote uni-

formity of legislation on the subject of automobiles, trunk line highways' and shell fisheries. The governors of the south met also in the same year to promote a uniform law in the south limiting child labor.

From this review of the widespread efforts to bring about uniform legislation in different fields it will be evident that the subject is of national importance. The air is full of the discussion of the subject. These discussions have been, however, confined to specific fields and in many cases the direct attempts to secure a uniform law in particular lines has been met with suspicion. Thus the uniform bulk sales act promoted by the national association of credit men and passed in many states was characterized by Justice Werner of the New York court of appeals, in a decision declaring the law unconstitutional, in these words:

"There is, moreover, a singular, not to say suspicious, coincidence in the time and substance of all this legislation. We are indebted to our Brother Bartlett for the suggestion that more than half of these statutes were enacted in 1903 and 1904, and nearly all of them since 1900. Statutes that are passed *pro bono publico* rarely sweep the country with such irresistible momentum, while much fantastic legislation has resulted from organized crusades upon legislatures by the advocates and supporters of special classes."

Indifference has often times characterized the attitude of various states toward obviously good measures like the negotiable instruments act. No objections have been urged against it and it is only the inertia of legislative bodies which leaves a single state without the act on its statute book.

With all the efforts toward uniform laws and with all of the public discussion the time was ripe for the conference called by the National Civic Federation which met in Washington January 16 to 19, 1910.

This conference did not originate the movement. It simply assembled the forces which had been working independently and united their influence in one big movement for national unity. There were present at the conference, prominent men from all parts of the country. It is doubtful if a convention was ever held in this country which brought together such a body of men and women representative of so many of the interests of the country. Forty-four states were represented by accredited delegates appointed by the governors. The great national organizations sent their leading men to help on the movement. The most complete harmony prevailed. There was not a discordant voice raised in that big assembly of men of all shades of opinion. Everyone believed in uniform law. Such differences as may have been shown were merely in the extent to which such uniformity was practicable.

The conference in Washington was treated to a kaleidoscopic view of a large part of the field where uniform laws are more or less desirable. The subjects discussed were, conservation of natural resources, workmen's compensation, convict made goods, child labor, pure food, oil inspection, divorce, banking, insurance, automobiles, vital statistics, uniform accounts, taxation and corporations. It will be observed this list includes some subjects upon which the necessity of uniform action is urgent and the possible results for good are tremendous while others are less urgent and the advantages from mere uniformity, slight. Thus the subject of conservation and insurance are of pressing necessity while, banking and child labor uniformity are advantageous, not because of the uniformity, but because uniform legislation will generally mean good legislation.

The list might have been extended by the addition of other subjects on which uniformity is more or less desirable. It is unquestioned that a degree of uniformity would be good in any line but it is not a pressing problem in many. There are some problems, however, which are demanding solution. It is to them that attention should be directed. Uniformity is good but it is not a panacea. There should be intelligent and well directed efforts along some lines to relieve the intolerable delays and losses which arise from present conditions. It should always be borne in mind that the greatest danger to effective uniformity will arise from the attempt to secure an impossible uniformity along all lines. The most dangerous pitfall of the uniform legislation agitation is that it may run amuck by attempting too much. Too great a uniformity is unnecessary and undesirable. It has been a source of great strength to this country that its forty-six states have served as so many laboratories of legislation. Measures are given a tryout in a limited area and their success or failure is keenly watched by progressive men in the rest of the states. We should retain that advantage but we should not hesitate to coöperate with all of the states in preventing the evasion of law by petty differences which serve nobody's advantage or the unnecessary burdening of industry with multitudes of regulations which serve no effective purpose and which ultimately burden the consuming public.

The most natural question is, how is a desirable uniformity to be promoted? The commissioners on uniform laws have been solving that problem in certain fields for the last twenty years and their accomplishments have been real. The conference at Washington commended strongly the work of the commissioners and put behind them a popular force which will bring swifter results than in the past. The efficiency of

legislative reference departments was also commended as a powerful means in promoting uniformity. The comparative study of legislation which is the chief function of these departments directly promotes uniformity. When such departments shall exist in all the states the detailed study of statute law can be carried on effectively and uniformity promoted. The various national associations will continue to promote uniform laws and the coöperation of all these forces which has resulted from the civic federation conference will bring good results.

The federal government can do a helpful work in this connection by passing model uniform laws for the District of Columbia. Several such laws have been promoted including a model insurance code, and a model budget.

There is on the part of few people a desire to alter the federal constitution but as Professor Stimson well said,

"By voluntary and simultaneous action—the same action which led to the formation of the federal constitution—it is hoped that the several states may gradually be brought to enact the same statutes on all purely formal matters, on most matters of trade and commerce, and in general on all of those subjects where no peculiar geographical or social conditions demand in each state a separate and peculiar statute law."

JOHN A. LAPP.

Vermont: Proposed Constitutional Amendments. The report of the commission appointed in 1908 to present proposals of amendment to the constitution of Vermont presents its suggestions in the form of eight proposals.

The first aims to eliminate the so-called "time lock clause" adopted in 1870 under which amendments may be proposed only every ten years. The method left in Vermont if this proposal is adopted is very similar to that of New York, where a serious defect is found in the popular vote of "a majority voting thereon." A proposed amendment must be subjected to a state-wide, strong attack to be defeated. Practically, any amendment brought to the popular vote is sure of adoption. Much of this seemingly unthinking vote is, however, in New York City, and it may be that in Vermont, without any such concentrated urban population, the proposed method is not open to this objection. It certainly must be admitted that a requirement of a majority of those voting at the election, for instance, seems too heavy a handicap, as Indiana has found out. Perhaps a more than majority popular vote is the best way to meet this objection.

Proposal two relates to the veto power and changes from a majority to two-thirds the required vote to pass a bill over the veto. This is another illustration of the growing tendency to concentrate responsibility in the executive. A mere majority vote on re-passage leaves little effect in the veto except of course where there is a dominating personality in the governor's chair. The requirement of a greater vote forces the concentration of a nearly overwhelming legislative opinion, evidencing apparently a wide-spread popular support opposed to the decision of the governor. From the other point of view, already referred to this proposal evidences a greater support for the opinion of the governor. Legislative action must be based upon sound fact and wise judgment when presented to the executive.

Proposal three hinges primarily upon a change of the general election date to the first Tuesday after the first Monday in November in even years, to conform with the practice in almost all other states. Unfortunately for the political prophets this would do away with the September "pointer" so full of grounds for prediction of the congressional and presidential results. But Vermont can well afford, as the commission says, to give up this real or imaginary political importance for the sake of convenience and economy. The adoption of this change would involve a change in the date of the meeting of the legislature to January in odd years, as is now the system in most of the states. The addition of another state to the long list of those now meeting at this time is worthy of note from the viewpoint of more or less uniform action upon subjects of interest throughout the country or a considerable section of it. With the present ease of communication, the action of one state legislature upon such a subject has no inconsiderable effect elsewhere. One has only to note the interest with which the votes on the income tax amendment are being followed, despite the fact that this is the even year when comparatively few legislatures meet, to realize the force of this contention. The change in election date also involves changes in term of state and local officers, provided for in the proposal.

The fourth proposal relates to the demand for yea-and-nay votes. The commission states that it has been true that the demand for the yeas and nays, which can now be made by one member, has often been resorted to solely for the purpose of delay. The change proposed still leaves a roll-call of record so easily to be obtained that the fullest desirable publicity of individual action is safe-guarded.

Proposal five concerns the pardoning power. At present the power to commute or remit sentence for murder rests with the legislature, and,

practically, the case of every person convicted of murder in the first degree is threshed over in the legislature. "It occupies the time of the legislature with the consideration of questions upon which it is poorly fitted to pass. It arouses a morbid sympathy for condemned murderers, unsettles the faith of the people in the results of murder trials and tends to make a spectacle of the administration of justice." Such a condition is anomalous, and the pardoning power is so evidently one for executive action that this proposal should find few in opposition.

Proposal six is another which tends to meet a wide-spread public demand, not only because of specific conditions in Vermont, as noted by the commission but also as a matter of right demanded by the people from their representatives. The proposal declares the ineligibility of legislators for appointive offices created or the emolument of which has been increased during their term of membership.

Proposal seven is directed to the abolition of the evil of special incorporation. "The result of special corporate legislation is the destruction of all uniformity, the granting oftentimes of privileges which ought to be preserved, the confusion of questions of broad public policy with someone's desire to gain a special privilege, and the diversion of the mind of the legislature from its real public duties."

The eighth proposal is concerned with the matter of form rather than of substance, and seeks to harmonize the existing draft of the original constitution of 1793 and the various amendments adopted at five different times since. It presents a new draft of chapter two of the constitution relative to the frame of government, and gives tables showing where each revised section obtains its subject matter, and where each old section may be found in the revision. The report also contains several appendices of valuable compilations of the constitutional provisions of other states relative to the special subjects presented in the report.

It is refreshing to note that the report is concerned strictly with subjects of constitutional law, and does not encourage the error of some other states which have incorporated in their constitutions matter which should be left to statute.

C. B. LESTER.

NEWS AND NOTES

PERSONAL AND BIBLIOGRAPHICAL

W. F. DODD

The Seventh Annual Meeting of the American Political Science Association will be held in St. Louis, Mo., from December 27 to 30. The American Economic Association, the American Sociological Society, the Association for Labor Legislation and the American Statistical Society will hold their meetings in the same city on the same days; and there will be several joint sessions of these kindred organizations. At the first session, on the evening of Tuesday, December 27, the addresses of Presidents Woodrow Wilson of the Political Science Association and Edmund J. James of the Economic Association will be delivered. There will be a session on Recent Constitutional Developments in Europe, including papers on the British House of Lords, Tendencies Toward Ministerial Responsibility in Germany, the Russian Duma and the Turkish Parliament. A session on State Government, to be addressed by several State Governors, is planned. At other sessions the following topics will be discussed: judicial organization and procedure, taxation, primary elections, municipal government, and political theory.

Programmes, giving the names of speakers, the titles of papers, and railroad, hotel and local arrangements, will be sent to members of the American Political Science Association early in December.

Prof. Karl Güterbock, of the University of Königsberg, who is well known to English and American students through his *Bracton and His Relation to the Roman Law* (translated by Brinton Coxe in 1866), celebrated his eightieth birthday in April of this year. In honor of this event his colleagues and former students have issued a "Festgabe" (Berlin, Vahlen, 2 vols.) composed of articles in the fields of German, Roman, criminal and public law.

Prof. Henning Matzen, of the University of Copenhagen, died in July. Prof. Matzen was one of the leading European authorities on legal

history, and had also written upon the subjects of constitutional and international law. For a number of years he had been a member of the permanent court of arbitration at the Hague.

Prof. Josef Ulbrich, of the German University of Prague, the leading authority upon Austrian constitutional law, died recently.

M. Nelidoff, Russian ambassador to France, and president of the second Hague Conference, died in Paris on September 18, at the age of 74.

Dr. Thomas W. B. Crafer, of the University of Wisconsin, has been appointed to the chair of political science at Middlebury College.

Dr. W. F. Dodd, recently of Johns Hopkins University, has accepted an appointment at the University of Illinois.

Dr. C. W. Thompson has been appointed assistant professor of political science at the University of South Dakota.

Prof. Josef Redlich, of the University of Vienna, spent about six weeks in the United States this autumn returning to Europe early in November. On October 13-19 Professor Redlich delivered a course of six lectures at the University of Illinois on "The Political Institutions of Austria-Hungary," and later he delivered the Godkin lectures at Harvard University, taking as his subject "Austria and Hungary as a Federation."

A Conference was held at Clark University on October 4-8 on "The Near East and Africa," and was participated in by Dr. James L. Barton, Prof. A. V. Williams Jackson, Prof. A. B. Hart, and a number of others.

Dr. Charles J. Hilkey, of Columbia University, has been appointed to an instructorship in political science at Dartmouth College.

Prof. A. R. Hatton, of Western Reserve University, will lecture at Harvard during this year on municipal administration in Europe and America. During the second half-year he will also conduct at Harvard a course on municipal reform in the United States.

Mr. Frank G. Bates has resigned the position of assistant professor of history and political science in the University of Kansas, to become

librarian of the Rhode Island Historical Society at Providence, R. I. Mr. Bates will also give some courses in political science at Brown University.

Prof. George C. Haines, until recently of Ursinus College, has been appointed to the chair of political science at Whitman College in the state of Washington.

Prof. Howard Lee McBain, of George Washington University, has become associate professor of political science at the University of Wisconsin. Prof. R. B. Scott, until recently of the department of political science at Wisconsin, has accepted a professorship in the law school of the same institution. Because of ill health, Professor Scott has been granted a leave of absence during the first semester of this year.

Mr. Blaine F. Moore has received an appointment as assistant professor of political science in George Washington University. Mr. Moore received his master's degree at the University of Illinois, and has completed residence requirements at Columbia for the doctor's degree. He is the author of a study entitled *A History of Cumulative Voting in Illinois*.

Dr. Frederick A. Cleveland, director of the New York Bureau of Municipal Research, has received an appointment from President Taft as head of a commission to devise a new system of accounting for the federal government. Mr. Cleveland has been with the Bureau of Municipal Research for a number of years, and to him credit is largely due for much of the valuable service rendered by the Bureau in connection with municipal reform in New York City.

The American Institute of Criminal Law and Criminology held its second annual meeting at Washington, September 30th and October 1. The address of welcome was delivered by Judge W. H. DeLacey of the Washington Juvenile Court. A joint meeting on criminal law reform was held with the American Prison Association Friday evening, September 30, at which addresses were delivered by Albert H. Hall, Esq., of Minneapolis, Dean Wigmore of Chicago; Judge Charles A. DeCourcy, of Massachusetts; Governor Gilchrist, of Florida, and others. Reports of general committees were made on Coöperation with Other Organizations, on Translations of Foreign Treatises, on the Establish-

ment of a Journal and on Statistics. Reports of section committees were made on a System of Recording Data of Criminals, on Probation and Parole, on Organization of Courts, and on Criminal Procedure in England. Most of these reports have been published in the Journal of the Institute, and the others are to follow. A report which attracted special attention was that made on English procedure by Professors John D. Lawson and Edwin R. Keedy, who spent four months during the past summer attending the English courts and studying their methods of procedure. Their conclusions were for the most part highly favorable to the English system. The meeting concluded with a banquet at the New Willard Hotel at which an address was delivered by the Attorney-General of the United States. Hon. Nathan W. MacChesney of Chicago was elected president of the Institute for the next year.

The American Prison Association held its annual meeting in Washington, September 29–October 2, and its meetings were immediately followed by those of the International Prison Conference, which met at the same place on October 2–8. The Prison Conference was attended by a number of the most distinguished foreign scholars in the fields of criminal law and criminology.

The general election in South Africa took place on September 15th, and resulted in a clear majority for the Nationalist party. The Nationalists won 67 seats; the Unionists, 37; the Laborites, 4; and the Independents, 13. General Botha was defeated, but will stand for another seat, and remain at the head of the Government. Dr. Jameson was elected, and will continue as the leader of the opposition.

The nominations of President Woodrow Wilson as democratic candidate for the governorship of New Jersey, and of Judge Simeon E. Baldwin as democratic candidate for the governorship of Connecticut, are events of interest not only to political scientists but to all persons who wish to develop higher standards in our political life.

The Century Company have issued a volume of *Readings in Civil Government* by Dr. Percy L. Kaye (pp. 535. 1910). In the arrangement of selections the plan of Forman's *Advanced Civics* has, in the main, been followed. Short introductory explanations by the compiler, precede each Reading, and additional suggested readings are appended to each chapter.

The *Report* of the sixteenth annual meeting of the Lake Mohonk Conference on International Arbitration has been issued (pp. 247). The Lake Mohonk Conference offers again for the coming year the Pugsley prize of one hundred dollars for the best essay on "International Arbitration," submitted by an undergraduate student of any American college or university.

The first number of the *Journal of Race Development* has appeared, the introductory article explaining the scope and need for the new periodical being from the pen of the editor Dr. J. H. Blakeslee, of Clark University.

The first number (October 1910) of *The Quarterly Journal of the University of North Dakota* has appeared. The Journal aims to represent the varied interests of the several departments of the University, but the first issue is predominantly political, in both its leading articles and book reviews. The subscription price is one dollar per year.

The *Zeitschrift für Völkerrecht und Bundesstaatsrecht* (vol. iv, no. 5, p. 503) print in full the text of the organic law for Bosnia and Herzegovina of February 17, 1910.

The following volumes have recently appeared in the Columbia University Studies in History, Economics and Public Law: *The Transition in Virginia from Colony to Commonwealth*, by Charles Ramsdell Lingley; *Standards of Reasonableness in Local Freight Discriminations*, by John Maurice Clark; *Legal Development in Colonial Massachusetts, 1630-1686*, by Charles J. Hilkey; *Social and Mental Traits of the Negro*, by Howard W. Odum; *The Public Domain and Democracy*, by Robert Tudor Hill; *Organismic Theories of the State*, by Francis W. Coker; and *The Making of the Balkan States*, by William Smith Murray.

The Houghton, Mifflin Company announces for fall publication *The Spirit of Democracy*, by Lyman Abbot.

Among other books announced for publication in the near future are; *The Commercial Power of Congress*, by David Walter Brown (Putnam); *The American Commonwealth*, new edition by James Bryce (Macmillan); *Great Cities in America*, By Delos F. Wilcox (Macmillan); *Criminal Psychology*, by Hans Gross (Little, Brown); *Modern Theories of Crim-*

inality, by Bernaldo de Quiros (Little, Brown); *The Interest of America in International Relations*, by Alfred T. Mahan (Little, Brown); *Race Distinctions in American Law*, by Gilbert T. Stephenson (Appleton); *Popular Law-making*, a study of the history and tendencies of English and American Legislation, by Frederic J. Stimson (Scribner); *Corruption in American Politics and Life*, by Robert C. Brooks (Dodd, Mead); *The Records of the Federal Convention of 1787*, by Max Farrand, 3 vols. (Yale University Press); *The High Court of Parliament and Its Supremacy*, an historical essay on the boundaries between legislation and adjudication in England, by C. H. McIlwain (Yale University Press); *The History of Parliamentary Taxation in England*, by S. A. Morgan (Moffat, Yard); *The Dominion of Canada*, by W. L. Griffith (Little, Brown).

The third annual *Bulletin* of the Comparative Law Bureau of the American Bar Association (pp. 230) has appeared. The volume contains articles by Judge C. S. Lobingier on legal developments in the Philippines, by Émile Stocquart on French and Spanish marriage laws, by M. Miyakawa on Japanese laws on domestic relations; by C. S. Watton in naturalized citizens, and by S. P. Scott on Spanish and Anglo-Saxon criminal law. But the bulk of the volume is taken up with summaries of recent legislation and judicial decisions in the countries of Europe and of Latin America. There are also notes of recent legal works published in the several countries.

A conference of the International Law Association was held at the Guildhall, London, August 2-5. The opening address was made by Lord Justice Kennedy. Among the subjects discussed were: International Arbitration, The Evolution of Law and Order of all Nations, The Declaration of London and The Doctrine of Continuous Voyages, the paper upon the last subject being read by Professor Charles Noble Gregory of the University of Iowa.

Under the auspices of the Comparative Law Bureau an English translation of *The Visigothic Code* has recently appeared, the translation having been made by Mr. S. P. Scott. (Boston Book Company. Pp. lxxiv, 420). The Bureau hopes to make available in English the most important codes of European countries; its plan including not only codes which are now in force but also those which may be considered of importance for an understanding of the historical development of the legal systems of continental Europe.

By a recent bequest the law school of the University of Pennsylvania has been enabled to establish graduate fellowships, and to publish in monographic form the studies undertaken by its fellows. The following publications have already been announced: *Japanese Commercial Code*, translated by Yang; *Early History of the Courts of Pennsylvania*, by William Henry Lloyd; *Partnerships—A Study in Theories, Statutes and Cases Apropos of the Proposed Uniform Partnership Act*, by James B. Lichtenberger; *Sources of English Law*, by George F. Deiser; and *Employers' Liability Acts*, by James T. Carey. These publications will be issued through the Boston Book Company.

The *Papers and Proceedings* of the third annual meeting of the Minnesota Academy of Social Sciences (pp. 165, vi) have appeared, under the editorship of Prof. W. A. Schaper. The volume is devoted to the subject of municipal government, and contains among others interesting papers on state supervision of public accounting in Minnesota, by F. N. Stacy; on the commission plan of government, by Benjamin F. Shambaugh; on the state police, by F. C. Miller; and on the city charter problem, with special reference to Minnesota, by W. A. Schaper.

The New York State Library has just published its *Review of Legislation, 1907-08* (pp. 475). The reviews have heretofore appeared annually, but in future will be published only once every two years, and the volume which has just appeared is the first of the biennial series. The *Review of Legislation* is constructed along the same lines as the earlier numbers in the series, but in this volume the absence of any review of changes in state governmental organization is particularly noticeable. The review for 1907-08 bears the date of September 15, 1910, and therefore appears nearly two years after the period for which legislation is reviewed; its usefulness is for this reason much impaired.

The September, 1910, issue of the *Annals of the American Academy of Political and Social Science* (Philadelphia, pp. 224) is devoted to papers dealing with the Settlement of Labor Disputes. Among the special topics discussed are the following: Injunctions in Labor Disputes, Boycotts, Industrial Arbitration, Trade Agreements, Employers' Associations, Sympathetic Strikes, the Canadian Industrial Disputes Investigation Act, Settlement of Industrial Disputes in New Zealand, and German Courts for the Arbitration of Industrial Disputes.

A Congress dealing with the general relations subsisting between West and East will be held in London from July 26 to July 29, 1911. So far as possible special treatment will be accorded to the problem of the contact of European with other developed types of civilization, such as the Chinese, Japanese, Indian, Turkish, and Persian. The official Congress languages are to be English, French, German, and Italian; but Oriental and other languages will not be rigidly excluded. The papers are to appear, collected in volume form, both in an all-English and an all-French edition, about a month before the Congress opens. The object of the Congress is to discuss, in the light of modern knowledge and the modern conscience, the general relations subsisting between the peoples of the West and those of the East, between so-called white and so-called colored peoples, with a view to encouraging between them a fuller understanding, the most friendly feelings, and a heartier co-operation.

In the August number of this REVIEW reference was made to the appearance of Howard C. Joyce's *Law Relating to Intoxicating Liquors*. Another work upon the same subject has recently appeared: *The Law Relating to the Traffic in Intoxicating Liquors and Drunkenness*, by W. W. Woolen and W. W. Thornton (Cincinnati: W. H. Anderson, 2 vols.)

The fifth edition of Taussig's *Tariff History of the United States*, which has appeared from the press of G. P. Putnam's Sons, brings the treatise to date by the addition of a chapter of fifty pages analyzing the act of 1909. The general estimate of this eminent authority upon the act deserves to be quoted. "In sum," concludes Professor Taussig, "the act of 1909 brought no essential change in our tariff system. It still left an extremely high scheme of rates, and still showed an extremely intolerant attitude on foreign trade. The one change of appreciable importance was the abolition of the duty on hides. As an offset to this were the increased duties on cotton and silks, and on a number of minor articles. Most disappointing was the mode in which the subject was dealt with. There was the same pressure from persons engaged in industries subject to foreign competition, the same willingness to accede to their demands without scanning. In the House, under the leadership of Mr. Payne, there was an endeavor both to maintain publicity and to prevent such concealed items. In the Senate, things went in star chamber fashion, and the familiar process of log-rolling and manipulation was once

again to be seen. The act as finally passed brought no real breach in the tariff wall, and no downward revision of any serious consequence. None the less, a somewhat different spirit from that of 1890 or of 1897 was shown in 1909. Though the act as a whole brought no considerable downward revision, it was less aggressively protectionist than the previous Republican measures. The increases of duty were more furtive, the reductions were more loudly proclaimed. The extreme advocates of protection were on the defensive. There was unmistakable evidence in Congress and in the community of opposition to a further upward movement. High-water mark apparently had been reached, and there was reason to expect that the tide, no longer moving upward, might thereafter begin to recede."

Prof. Gaston Jèze, the well-known authority on French financial administration, has recently issued a volume entitled *Éléments de droit public et administratif* (Paris: Giard et Brière, pp. xviii, 313). This little book presents clearly but briefly the general principles of French public law.

A French translation, in two volumes, of Jellinek's *Das Recht des modernen Staates*, is promised from the press of E. Giard & E. Brière.

Dr. Heinrich Gerland's *Die englische Gerichtsverfassung* (Leipzig, Göschen, pp. xvi, 1020) is a systematic account of the present English judicial organization, the preparation of which has been in part occasioned by the recent movement for judicial reform in Germany.

La Hollande politique, by Paul Verschave (Paris, Perrin, pp. 419), is a study of the history and present situation of political parties in the Netherlands. The author discusses the history and principles of each party, and the coalitions which they have formed with each other. The work is an important contribution to the parliamentary history of the Netherlands since 1848, and is especially welcome because before its appearance there had been no available study of the working of parliamentary institutions among the Dutch.

Pan-Amerika: Entwicklung, Umfang und Bedeutung der pan-amerikanischen Bewegung (Berlin, Maritima, pp. xx, 304) is a sympathetic account of the Pan-American movement, by Alfred H. Fried, the well-known advocate of international peace. The author gives an historical

account of the movement for closer relations among the states on the American continent, describes the organization of the International Bureau of the American Republics, and the efforts to establish close commercial relations among the American states. He thinks it an error to conclude that the Pan-American movement is one by which the United States is attempting to establish a hegemony over the other independent states on this continent, and argues that European countries should aim to establish among themselves relations similar to those established among the countries on the American continent.

Organisation des ministères des affaires étrangères dans un certain nombre de pays, by Baron Guillaume (Brussels, Goemaere), is a summary account of the organization of the foreign services in Germany, Great Britain, Austria-Hungary, the United States, Belgium, France, Italy, Russia, the Netherlands, Roumania, Sweden, and Switzerland. The author includes in his discussion not only the organization of the ministries, but also an account of the diplomatic and consular services; and treats of the appointment, advancement, and retirement of members of these services in the respective countries.

CURRENT MUNICIPAL AFFAIRS

WILLIAM BENNETT MUNRO

One of the most important of the various results achieved by the New York Bureau of Municipal Research is to be seen in the development of the official sentiment that has prompted the coming Budget Exposition. New York is the first American city to undertake, for the enlightenment of the taxpayers, an extensive public exposition of the way in which a budget is compiled. The various departments of the budget will be demonstrated by the use of diagrams, tables and charts; and wherever it is possible to do so actual materials and tangible illustrations of the things for which the city's money is spent will be put upon exhibition. Lectures will be given daily by various heads of departments and chiefs of bureaus explaining the intricacies of departmental administration and defending the expenditures under their control. It is planned, if enough public interest in the experiment is aroused, to make the budget exhibit an annual affair in the hope that it may draw forth profitable suggestions as to how money can be saved without impairing service. In any case the experiment is of the highest interest if only in the fact that it shows a new and welcome tendency on the part of the city government to take

the public frankly into its confidence and to offer unique facilities for the development of intelligent criticism. The step may well be commended to the attention of the financial authorities in other large cities.

In the August number of this REVIEW reference was made to the proposed establishment in Chicago of a permanent bureau similar to the New York Bureau of Municipal Research. The City Club of Chicago, which was back of this project, has raised the sum of \$130,000, which was considered necessary to maintain the bureau for two years, and has established a Bureau of Public Efficiency, among the trustees of which are Charles R. Crane, Walter L. Fisher, and C. E. Merriam. Mr. Herbert R. Sands, until recently an expert accountant of the New York Bureau of Municipal Research, is director, and Mr. George C. Sikes is secretary, of the Chicago bureau. The function of this Bureau of Public Efficiency will be: To scrutinize the systems of accounting in the eight local governments of Chicago, to examine the methods of purchasing materials and supplies and of letting and executing construction contracts in these bodies, to examine the payrolls of these local governing bodies with a view to determining the efficiency of such expenditures, to make constructive suggestions for improvements in the directions above indicated, and to coöperate with public officials in the installation of these improved methods, and to furnish the public with exact information regarding public revenues and expenditures and thereby promote efficiency and economy in the public service.

*The Chicago Police School.*¹ General Superintendent of Police LeRoy T. Steward of Chicago has recently inaugurated a systematic course of instruction and training in police methods for future new members of the police force. The experiment, which will everywhere be watched with interest, marks an innovation in police administration, crystallizing in many respects numerous efforts which have been made in different parts of the country toward bringing the municipal soldiery to a higher state of efficiency.

"The object of this school," writes Col. Steward, "is to train police officers before they are assigned to regular positions. Under the old method new men were attached to stations, where they acquired a certain amount of information or misinformation by mingling with, and listening to, quotations from experienced men. It is my idea that men

¹ This note is kindly furnished by Mr. T. L. Sidlo.

should have an opportunity to become theoretically acquainted with their duties before undertaking their actual performance. The first month will be fully devoted to theoretical instruction. The subsequent five months will be devoted to class work, combined with practical work. The initiates will be taken out for the latter purpose, in squads, and will be required to make reports, raids, searches, arrests, and, in a word, prepare themselves for all the duties that a policeman will ordinarily be called upon to execute; and so far as possible this will be done in actual service."

The courses of study, as outlined by Supt. Steward, are as follows:

(a) The orders, rules and regulations of the police department, the keeping of records and making out of reports.

(b) Traffic rules and regulations and the handling of traffic.

(c) The ordinances of the city of Chicago applicable to the police department.

(d) The laws of the state of Illinois applicable to the police department.

(e) Procedure in courts of law and at coroners' inquests and the preparation and giving of testimony, including the holding of moot courts.

(f) First aid to the injured and general sanitary and health regulations.

(g) "Setting up" and gymnasium exercises and drill.

(h) The care and nomenclature of the revolver and revolver practice.

During this period in this "police West Point" every Saturday is to be given over to reviews and examinations. No man is to be given a commission until he has satisfactorily completed this preliminary discipline.

The University of Wisconsin has issued an announcement of the "Institute of Municipal and Social Service" which it has established in Milwaukee. This step represents a new and promising venture which the University Extension division has made in the field of public service. Headquarters are to be established in Milwaukee and Professor K. G. Smith will be placed in charge as director. Two general courses will be offered during the winter of 1910-1911, one an evening course on "Municipal Functions and Problems;" the other an afternoon and evening course on "Philanthropy and Social Uplift." Both will consist of lectures and conferences in which the chief share of the work of instruction will be borne by instructors connected with the University of Wisconsin; but a number of outside lecturers will take part in the instruction as well. The meetings of both courses will be held in the Council

Chamber of the City Hall and enrollment is open without charge to all residents of the city who may desire to attend. An examination will be held at the end of each course.

The annual meeting of the National Municipal League will be held in Buffalo, N. Y., from November 14th to November 16th inclusive. The members of the League will be the guests of the Buffalo Chamber of Commerce and other organizations.

The March issue of the *Annals of the American Academy of Political and Social Science* contains a group of interesting articles on the general topic of municipal parks and recreation facilities.

The conference of municipal officials held at Schenectady, N. Y., during the summer was attended by more than 200 mayors and other city officers representing forty-two cities of New York State. The conference adopted a series of resolutions dealing with administrative improvements in city affairs, and particularly with reference to improved methods of protecting the public health. The next conference will be held at Poughkeepsie in June, 1911, and the meetings will be devoted largely to a discussion of the framework of municipal government in New York cities with a view to agreement on various desirable changes.

A Bureau of Municipal Research has been established in connection with the Boston Finance Commission and Mr. George A. O. Ernst has been appointed director, and Mr. Guy Emerson, former city engineer of Boston, has accepted the post of consulting expert. The bureau is supported by an annual civic appropriation of \$10,000.

An interesting new quarterly publication *The Town Planning Quarterly Review* has made its appearance under the aegis of the Department of Civic Design of the University of Liverpool, and affords interesting evidence of the extent to which the young and thriving universities of England are reaching out into the field of public service. The purpose of the new review is to explain, interpret, and comment upon city planning projects as these may come forth in the chief municipalities of various countries. The initial number is generous in the attention which it gives to the United States and contains a detailed description of Chicago's city plans and a survey of the Boston Metropolitan Park system. There is also a short bibliography of materials relating to city planning in America.

A recent bulletin issued by the United States Census Bureau is devoted to the question of American municipal indebtedness. The report is based upon the figures for the year 1908. The total indebtedness of the 158 cities having populations exceeding 30,000 amounted to about one-and-three-quarter billion of dollars, of which amount New York City was responsible for \$684,000,000 or approximately 40 per cent of the whole. Reckoned in terms per capita New York comes highest on the list, with a debt of \$157 for every man, woman and child within her spacious limits. Cincinnati takes second place with \$128, and Boston comes third with \$119. The fact that Galveston with a per capita debt of \$113 comes fourth on the roll seems to show that the home of commission government is not yet quite out of the woods so far as the financial situation is concerned.

The municipal authorities of Chicago concluded, during July, a new lighting contract of a comprehensive character. The contract calls for the provision of 23,000 street lights at \$22 each per year, a very marked reduction from the price formerly paid.

The William H. Baldwin Prize of \$100 offered annually by the National Municipal League for the best essay on a subject in Municipal Government will be awarded in 1911 to the undergraduate student in any American college or university who presents the best study of "The Administration of the Police Department in some city of the United States with a population of over 200,000." Essays must not exceed 10,000 words and must be sent to Hon. Clinton Rogers Woodruff, Secretary of the League, North American Building, Philadelphia, not later than March 15th. In the last competition thirty-nine essays were submitted from students representing seventeen different institutions.

The ten-million-dollar tunnel connecting Detroit, Michigan, with Windsor, Ontario, has been completed, the work having taken about four years. The tunnel has a capacity of about 3000 cars per day and besides greatly augmenting the transportation facilities of both cities, will incidentally make possible an eighteen-hour train service between New York and Chicago.

Messrs. R. T. Paine, Jr., of Boston, Joseph P. Cotton of New York, and Dr. Delos F. Wilcox, of the New York Public Service Commission, have been appointed by the National Municipal League to summarize the conclusions reached at various times by this organization on the

matter of municipal franchises, to study recent franchises granted by American city authorities, to compare these with former grants, and to recommend guiding principles for future use.

The Public Utilities Commission of Denver, after having offered the Denver Union Water Company the sum of \$7,000,000 for its plant and receiving a refusal, submitted to the voters of the city a proposal to borrow a somewhat larger sum for the construction of a municipal water system. At the election of September 7th the proposal was accepted by a large majority. A temporary injunction has been issued, however, restraining the issue of the new water bonds until their legality can be passed upon.

A recent number of the Louisville Courier-Journal contains an interesting description of the municipal farm maintained by Kansas City, Mo., and worked by city prisoners. Prior to the establishment of this farm the city incurred an expense of \$220 per annum for each prisoner maintained in the city workhouse. According to the figures given the city now makes each prisoner yield a profit at the rate of about \$120 per year and the general demeanor and conduct of the prisoners is distinctly improved.

There is to be held in November, in Galveston, a Commission Government Conference.

The *Schriften des Vereins für Sozialpolitik* contain, in recently issued volumes, a series of studies concerning the public enterprises of various cities in the different countries of Europe. The volume which is devoted to the *Gemeindebetriebe* of France and England is written by Professor Honoré Berthélemy and D. Knoop. Although not lengthy, the discussion is inclusive and interesting. Other volumes discuss municipal enterprises in the various German States, in Italy, in Australia, in Belgium, in Switzerland, and in Austria. A further series devoted to the subject of municipal finances is projected. The Municipal Library at Buda-Pesth has issued a series of bibliographical *Bulletins* covering various important phases of municipal administration in Europe. The bulletins are printed in French, German, and Hungarian.

Several interesting American publications in the field of municipal government have appeared during recent months. Among them is the

report issued by the New York Bureau of Municipal Research entitled *Business Methods of New York City's Police Department*. This report is based upon the investigation conducted into the affairs of the department during the winter of 1908-1909 (New York, 1910, pp. 212). The report is devoted, in the main, to conditions prevailing in the Bureau of Repairs and Supplies and does not deal to any considerable extent with the general administration of New York police.

Through the Macmillan Company Dr. Delos F. Wilcox has issued a handy volume entitled "Great Cities in America: Their problems and their government (New York, 1910). The book is an elaboration of an article contributed by Dr. Wilcox a year or two ago to the *Schriften des Vereins für Sozialpolitik* and presents a good elementary study of the government of eight large American cities, New York, Chicago, Philadelphia, St. Louis, Boston, Baltimore, San Francisco, and New Orleans.

A volume of selected readings on *The Commission Plan of Municipal Government* has been compiled by E. C. Robbins (Minneapolis, Wilson & Co., 1910).

The Dethronement of the City Boss is the title of a volume by John J. Hamilton (New York, Funk & Wagnalls Co., 1910, pp. 285). Despite its very broad title the book is devoted almost wholly to a description of the commission plan of city government as tried in four or five different cities, particularly in Des Moines. The author writes interestingly and is an enthusiastic advocate.

The Charities Publication Committee has published a useful and thoroughly practical treatise on *Housing Reform* from the pen of Lawrence Veiller (New York, 1910, pp. 213). The book is informing, clear, and replete with judicious suggestions.

The usual conditions of government in a middle-size American city are portrayed in *Memphis: A Critical Study of Some Phases of its Municipal Government*, issued by the Bureau of Municipal Research (Memphis, 1910, pp. 203).

Among foreign books on municipal government and administration appear the following recent publications: O. Tetzloff, *Die Schulden*

der preussischen Städte (2 vols., Berlin, 1909-10, pp. vi, 293; vi, 880); E. Bouvier, *Les régies municipales*. (Paris, Lib. Doin, 1910); W. A. Casson and A. Ridgway, *The Housing and Town Planning Act of 1909* (London, C. Knight, 1910, pp. 148); P. Hirsch, *Die Städteordnung für die 6 östlichen Provinzen der preussischen Monarchie* (Berlin, 1910, pp. 174); H. Jephson, *The Making of Modern London*, (London, P. S. King & Co., 1910); W. A. Willis, *The Law Relating to Housing and Town Planning in London* (London, 1910, pp. 243); and F. Zadow, *Der ausserordentliche Finanzbedarf der Städte*. (Jena, 1909, pp. 112).

Prof. C. E. Merriam of Chicago University, a member of the Executive Committee of the National Municipal League, and a member of the Chicago Board of Aldermen has been the chairman of a civic investigating committee which has rendered good service during the past few months in disclosing various unprofitable methods thitherto pursued in the city's administration.

An enterprise known as The Civic Advance Campaign has been undertaken by the Boston 1915 Movement and will occupy a share of its attention during the coming winter.

The eleventh annual report of the Brooklyn League, recently published, gives an account of the valuable work of this association for civic betterment. The illustrations of improvements, proposed or completed, add to the value of the volume.

BOOK REVIEWS

A History of Mediæval Political Theory in the West. By R. W. CARLYLE and A. J. CARLYLE. Vol. II, *The Political Theory of the Roman Lawyers and the Canonists, from the Tenth Century to the Thirteenth Century.* By A. J. CARLYLE. (New York: G. P. Putnam's Sons. Edinburgh and London: William Blackwood and Sons. 1909. Pp. ix, 274.)

This volume is the second instalment of a series intended to cover the history of political theories from the second century to the sixteenth and seventeenth centuries, when, as the authors say, "the specific characteristics of modern political theory began to take shape." The first volume of this series was published in 1903, bringing the subject down to the ninth century. The time which has elapsed since the appearance of the first volume suggests the amount of labor and care devoted to the preparation of this most valuable and instructive work.

The chief significance of this work consists in its lucid exposition of political theories based upon an extensive and careful study of original texts. The abundant foot notes, which form a conspicuous feature of the work, consist almost entirely of illustrative excerpts from the writings of those authors whose views are made the subject of investigation. These excerpts are drawn from a large field of political and ecclesiastical literature and are skilfully arranged to accord with what the authors seem to believe are the essential elements of a comprehensive political theory. These elements comprise in a general way: (1) the theory of *aequitas*, or justice in the widest sense, whether expressed in the "natural law" or the "divine law;" (2) the theory of *jus*, or law as the concrete expression of equity, whether embodied in the law common to all nations (*jus gentium*) or the particular law of a single state (*jus civile*); (3) the theoretical source of political authority whereby the law is made compulsory, whether based upon the will of the people, which was the theory of the Roman jurists and the mediæval civilians, or upon the will of God, which was the theory of the Christian Fathers and the mediæval canonists; and (4) the theory of the relation of the secular and

ecclesiastical authorities as expounded in successive periods by both the civilians and the canonists.

It is difficult to appreciate the full significance of this second volume which treats of the theories of the mediaeval civilians and canonists, without some reference to the subject matter of the first volume, which is devoted to the theories of the Roman juriconsults and the Christian Fathers. Indeed we may see in the progress of these two volumes a striking illustration of the continuity of political thought. For example, the mediaeval notions regarding law and equity are seen to be derived from the earlier juristic and ecclesiastical literature of the Roman Empire. Moreover, the diverse views advocated respectively by the mediaeval civilians and canonists regarding the source of political authority—views which finally emerged in the doctrines of “popular sovereignty” and of “divine right”—may be traced to the divergent theories of the Roman lawyers and the Christian Fathers. And what also seems worthy of notice, this distinction between what may be called secular and religious conceptions of the state, seems to be implied in the still earlier views of Cicero and Seneca.

So far as their ethical philosophy is concerned, both Cicero and Seneca alike drew their inspiration from the Greek stoics. But in their political theories they were far from identical. While both emphasized the principle of justice as the basis of law and the end of the state and held to the natural equality of all men, they were at variance in their views as to the origin of the state and the source of political authority. With Cicero the state is the organized body of the people and results from the natural development of human society; its authority is based upon the universal sense of justice as expressed in the popular conscience and will. His theories were thus substantially those of the Roman juriconsults. With Seneca, on the other hand, the state is a conventional institution made necessary by the growing corruption of human nature and the degeneracy of men from a primitive condition of innocence and perfection. His views were thus somewhat similar to those advocated by the Christian Fathers. While Seneca had no clearly defined theory of “divine right,” he yet calls upon the prince to “remember that he out of all mankind has been chosen to act in the place of the gods.”

This divergence between the theories of Cicero and Seneca finds a more marked expression in the antithetical views held by the juristic and ecclesiastical writers of the empire. This statement does not mean that there were not certain fundamental ideas which were accepted in common by the Roman lawyers and the Christian Fathers. They both,

for example, adopted the theory of the "law of nature" and the natural equality of mankind, and they in common regarded slavery and certain features of the law of property as contrary to the natural law. But the Roman lawyers considered these abnormal institutions as based upon the common customs of all nations (*jus gentium*) and hence sanctioned by the positive law of a particular state (*jus civile*). But the Fathers, while accepting in a general way the juristic distinction between the *jus naturale* and the *jus gentium*, looked upon slavery and private property as inconsistent with the primitive state of man's innocence and as resulting from sin and the fall of man from his primordial condition; so that these institutions were recognized by Christian writers as a part of the "divine system of remedial discipline."

But it is with reference to the source of political authority that we find the most important cleavage between the juristic and ecclesiastical writers of the empire. We have clearly pointed out to us by abundant references the fact that the Roman lawyers expressed "one aspect of the theory out of which the mediaeval and modern democratic theory of the state has grown." The Roman *populus* was regarded by them as the ultimate source of political authority—not only under the republic, but under the empire as well. The common notion that the emperor was in theory regarded as the ultimate source of authority is usually supported by Ulpian's well known aphorism, *Quod principi placuit, habet vigorem*. But Ulpian's full statement is as follows: "What is pleasing to the prince has the force of law, since the people by the *lex regia*, which was enacted with reference to the *imperium*, conferred upon him all his authority and power (*omne suum imperium et potestatem*). This was the universal theory of the Roman jurisconsults. From the time of Julianus in the second century to that of Justinian in the sixth, it is clear that the emperor was regarded as the source of law only because the people by their own legislative act had made him so. In turning to the Fathers we find an entirely different view as to the source of political authority. According to these writers government is a divine institution made necessary by the vices of human nature, or the "fall of man from his lost estate." This is somewhat similar to the view of Seneca; but the Fathers depended mainly for its support not upon reason but upon the interpretation of Scripture. The conception which in later times became the formal theory of the "divine right" of the monarch, was in the opinion of our author first drawn out and stated by some of the Fathers, notably by St. Gregory the Great. Ambrosiaster speaks of the king as the "Vicar of God;" but St. Gregory emphasizes the claim

that the ruler, whether good or evil, must be revered as one who derives his authority from God. The early Fathers also drew up a distinct theory of the relation between the secular and ecclesiastical powers. This was most clearly stated by Pope Gelasius I, and is known as the "Gelasian theory." According to this theory the authorities of church and state are both divine, coördinate, each independent in its own sphere, and each subject in the sphere of the other.

These expositions and the excerpts upon which they are based, are exceedingly interesting to the historical student, not only as illustrating certain common legal principles of the Roman lawyers and the Christian Fathers, but especially as tracing the gradual divergence of political theories, on the one hand, in the direction of the modern doctrine of popular sovereignty and, on the other hand, in the direction of the theory of divine right.

The profound influence of the legal thought of the old Roman Empire upon subsequent times is seen in the opinions of the mediaeval civilians and canonists, which form the subject of the second volume of this series. While the author is aware that the systematic study of law in the middle ages did not begin with the founding of the great school at Bologna, a large part of his original sources are derived from writers of this school. From an examination of these sources the conclusion is drawn that the political theories of the mediaeval civilians are directly founded upon the law-books of Justinian, and that they often do little more than restate the positions laid down by the great jurisconsults of the second and third centuries. It is a noteworthy fact, however, that while they adhere quite closely to the phraseology of the ancient lawyers, they are not unaffected by the theistic influence of the Christian Church. For example, they supplemented the ancient ideas of *aequitas* and *justitia* by referring these principles to the nature and will of God. But they nowhere used such propositions to support the theory of the divine right of kings. On the contrary, they agreed substantially with the ancient lawyers in explaining the source of political authority. They held that political power is derived from the people, that the authority to make laws is founded upon the natural relation between a society and its members; and moreover, that if this authority is exercised by any particular person it is by virtue of his being recognized as the people's representative. Some of the civilians even maintained dogmatically that the emperor or prince had no arbitrary authority in legislation, but that his authority was always in some measure limited by law. It may be noticed that this theoretical view of popular sovereignty was also

in harmony with the normal conception of the new Teutonic states—that law and political authority proceed from the nation as a whole. After an examination of the writings of the civilians on this subject, our author concludes that the ordinary view that the revived study of the Roman law was unfavorable to the progress of political liberty, while it may contain some elements of truth, requires very considerable qualification—at least, so far as its influence in the twelfth and thirteenth century is concerned.

The mediaeval canonists, as well as the civilians, show their great indebtedness to the ancient juriconsults. The theories of the canonical writers were drawn largely from the "*Decretum*" of Gratian. But the treatment of law by Gratian was founded primarily upon the work of St. Isidore of Seville, who in turn closely followed the Institutes and Digest of Justinian. We consequently find in Gratian the same tripartite division of the law which Justinian derived from Ulpian, namely, the *jus naturale*, the *jus gentium*, and the *jus civile*. But the canonists emphasized the divine character of the *jus naturale*, as distinguished from the human character of the *jus gentium* and the *jus civile*. They thus resolved the tripartite division of the ancient juriconsults into the broader two-fold division—the divine law and the human law. But the natural law—which they now identified with the divine law—is in their view discoverable not simply by the human reason, as the ancient lawyers held, but by the revealed word of God, as the Christian Fathers had taught. The important consequence of this theory is apparent. The supremacy which the ancient jurists gave to the natural law as a rational principle of justice, the mediaeval canonists accord to the Scriptures, as the supreme standard to which all human law must conform. In their explanation of the source of political authority, the canonists are also in substantial agreement with the Fathers. Although they do not present a complete discussion of the origin and nature of civil society, they accept the patristic doctrine of the "fall of man," and the view that government is a divine remedy for the confusion caused by sin, and is hence a divine institution. It represents the divine authority, and "the man who sets it at naught is setting at naught the authority of God Himself." Our author declares that this is the view that prevailed with the canonical writers from the ninth to the thirteenth century.

It will be impossible in this limited space to set forth the author's explanation of the canonical theory of the canon law itself, and the nature of the authority of the church. Many texts are examined upon

these subjects, but the chief reliance is placed upon Gratian's "*Decretum*." Gratian does not, as might be supposed, identify the canon law with the divine law; and hence its validity must be judged by its conformity to a higher standard. Every canon law, the same as every civil law, which is inconsistent with the natural or divine law, is void. In estimating the relative importance of the sources of canon law, Gratian places the canons of the general councils first, and the decretal letters of the Pope second, not ignoring a certain authority attached to custom. But behind these sources lies the authority of the "natural law" in the canonical sense. The theory of Gratian is thus summed up: "The canons of the church belong to the same category as the civil law of the state. They do not represent an absolute final authority, but are rather the expressions of the authority residing in the church and its proper officers for the government of the society, subject always to the authority which lies behind the society." "But," it is claimed, "they are binding upon all the members of the society; to refuse to obey them is to refuse to obey the authority of God, from whom their authority is derived." But the difficult question as to how an appeal may be made from a canonical law—which is admittedly not final, but which must be obeyed—to a superior authority to which such law must conform, remains unanswered.

The concluding chapters of this volume are devoted to the canonical theory of the relation of church and state. In general it may be said that the fundamental theory of the whole canon law was substantially that already defined by Pope Gelasius I, wherein both authorities were regarded as equally divine, each supreme in its own sphere and subject in the sphere of the other. In its general statement this theory seems simple enough. But the attempt to delimit the spiritual and temporal spheres of authority was attended with many complexities, resulting in the greatest controversies of the mediaeval period. It is beyond the scope of the author's work to trace the history of these controversies. It is simply his task to set forth those features of the canon law which were used to support the church in its claims—not to the exercise of proper political authority, but to the exercise of spiritual jurisdiction over the holders of temporal power, and thus in effect to give the church a practical supremacy over the state. These features of the canon law are examined under the following heads: (1) the traditions in which the Papacy had apparently exercised some such jurisdiction; (2) the theory that the excommunication of temporal rulers absolves the subjects from political allegiance; (3) the theory that Peter,

and therefore his successors had received a spiritual authority which might affect secular affairs; and (4) the interpretation of the "Donation of Constantine." These several points are examined with the aid of the earlier canonical collections, the "Decretals" of Gregory IX but especially the decretal letters of Innocent III. It is made clear that even the great "arbiter of Christendom," Innocent III, makes no pretension in his letters to a general political supremacy, that he makes no claim to act as one who possesses a political authority over a temporal sovereign. He appears simply to claim the right to exercise a spiritual jurisdiction over the transgressions of a temporal prince in the same way as over the sins of any other subject of the church, and also over such cases of controversy as are, according to the canon law, transferable from a temporal to an ecclesiastical tribunal. It was only by virtue of his position as spiritual sovereign that the Pope asserted his authority over temporal rulers; and hence in the height of its power the Papacy still claimed to be acting strictly in accordance with the "Gelasian theory."

The attempt has been made, in this somewhat extended review, to indicate the distinctive subject-matter of this work and the method pursued in its investigation, as well as some of the more important conclusions drawn. It can hardly be claimed that these conclusions bear the marks of striking novelty, or will tend to modify greatly the opinions of the student familiar with the history of legal and political literature; but there are few historical students whose views will not be clarified and made more definite by following the remarkably interesting and lucid treatment of the subject as presented in these pages. There are certain critical suggestions which might be made—for example, regarding the ambiguity attached to the term *jus gentium*, and the extent to which the study of the civil law was pursued before the twelfth century—but these would be relatively unimportant in comparison with the unmistakable merits of this work as a whole.

WILLIAM C. MOREY.

Through Afro-America. An English Reading of the Race Problem. By WILLIAM ARCHER. (New York: E. P. Dutton & Co. 1910. Pp. xvi, 295.)

The portion of this book which is devoted to the subject of its title embraces the first 244 pages. Here we have the somewhat more than casual observations of a fair-minded Englishman upon the Southern

aspects of the American race problem. In addition to a trip through certain portions of the South, Mr. Archer has fortified himself with the books and opinions of others.

In a few sentences the author exhibits an appreciation of the abiding, fundamental character of the problem such as is not attained by half the writers who discuss it—whether from the viewpoint of the North, the South or Europe. "The truth is," he writes, "it seems to me that no race problem, properly so called, arises until two races are found occupying the same territory in such an approach to equal numbers as to make it a serious question which colour shall ultimately predominate" (p. xi). Again: "The Southern states of North America at present offer to the world a spectacle unexampled in history. It is the spectacle of two races, at the opposite extremes of the colour scale, forced to live together in numbers not far from equal, on a theoretic basis of political equality. In other regions where white men and black have come into close contact, the circumstances have been, and are, essentially different" (p. 187). And: "The situation in Jamaica, in fact, has scarcely an element in common with that of the Southern states" (p. 274).

The tone of Mr. Archer's discussion is in keeping with this frank realization and acceptance of the fundamentals of his subjects. It is, therefore, in agreeable contrast to that of the man who attempts to read lessons to the Southern people out of the depths of an experience confined to sections or places where no race problem exists, in any real sense—either because of the races themselves, or because of their relative numbers, or because of the presence or absence of factors which are of the very essence of such problems. Mr. Archer is equally candid in his criticism of certain Southern attitudes and customs—not always, however, realizing that they are the inevitable outcome of the very conditions for the existence of which he attaches no blame to the Southern people. For example—he considers some features of the administration of the separate coach laws abominable, yet frankly accepts the necessity for the laws themselves (pp. 70–72). Mr. Archer gives a running review of what he saw and heard in Louisville, Memphis, New Orleans, Montgomery, Birmingham and Charleston, with his impressions of customs and things. He has an interesting and analytical chapter on Mr. Washington and Mr. Du Bois, and finds the one a practical optimist and the other a rather pessimistic idealist. He describes Tuskegee and Hampton and pays high tribute to each, and has a word or so on prohibition, education and peonage. He then proceeds to "face the problem," and devotes some fifty-odd pages to a discussion of solutions and remedies. He takes issue

squarely with the dictum of his friend Mr. H. G. Wells, to whom he dedicates his book, that the only race problem is that created "by the almost insane arrogance and inhumanity of the Southern white man," and with the more mildly stated opinion of Professor Royce (pp. 197-8). He thinks that Sir Sydney Oliver sadly misses the mark in failing to recognize the fundamental differences between Jamaican and Southern conditions.

Mr. Archer is not an optimist in this volume. He finds it impossible to accept Mr. Washington's basis of compromise—the coöperation of the two races in all industrial affairs, and the absolute separation in all things social. The four solutions which he considers are, the final extinction of the negro, the Washington compromise, amalgamation, and segregation. He dismisses the first three, and leans decidedly to the last—to be accomplished through the creation of a negro state, on an equal footing with the other states of the Union. Those familiar with race problem discussions during the past fifteen or twenty years will at once recognize in Mr. Archer's proposition a plan which for a long time was persistently advocated by John Temple Graves. It would be idle to criticise it here. If we must include solutions in our discussions of an unsolvable problem, this one answers the purpose quite as well as another.

Altogether, Mr. Archer has given us a readable and suggestive volume, free from cant, free from any holier-than-thou spirit, in all things honest, candid and fair.

The Southern South. By ALBERT BUSHNELL HART. (New York and London: D. Appleton & Co. 1910. Pp. 444.)

He must be a capitious and querulous reader indeed, especially if a Southern man, who can traverse the pages of Professor Hart's book and maintain a spirit of hostile criticism. If he will bring to its perusal the same judicial frame of mind, the same honesty and candor, which characterize its writing, he will find but little just ground for fault-finding or complaint. And this testimony is the more gladly given because this reviewer has not hitherto found in Professor Hart's various criticisms of Southern life and conditions the same degree of appreciation of the difficulties which beset the Southern situation, the same comprehension of those conditions, the same kindly and sympathetic tone, which mark the present volume and serve to give it place in the first rank of writings critical and descriptive of the Southern states and people.

In his introduction the author says: "If this book make any contribution toward the knowledge and appreciation of Southern conditions, it must be by observing throughout two principles. The first is that no statement of fact be made without a basis in printed material, written memoranda, or personal memory or the testimony of people believed to speak the truth. The second is that in the discussion there be no animus against the South as a section or a people. . . . The aim of the work is not to cavil but to describe, with full realization that many of the things upon which comment is passed are criticized in the South, and have a counterpart in the North." There could be no fairer basis of investigation than this, and Professor Hart has succeeded excellently well in "living up to his principles." This need not mean that the book contains no statements or expressions which are open to adverse criticism, or none which jar a Southern reader's feelings. It would be either all mush and milk or a superhuman performance, if this could be said of it. It does mean that the tone of the volume is distinctly friendly and fair, its statements of fact in the main carefully made, and even its adverse criticisms thoroughly honest and kindly.

By Southern South is meant more particularly the cotton states, from South Carolina to Texas, with less attention to Virginia, North Carolina, Kentucky and Tennessee, and with the border states of Maryland, West Virginia and Missouri excluded. The author does not find the so-called "poor white" as a class the abject creature which tradition has made him (pp. 38 and 42). He discriminately recognizes the existence of the Southern white farmer, who did not think it a disgrace in ante bellum times to work his own land with his own hands, and who was not and is not thought to be degraded thereby, by his more prosperous neighbors (pp. 60-61). He does not, however, fully appreciate the part which this class of farmers is now playing in the production of cotton—as his opinion seems to be that more than half of that crop is still grown by negro labor. In a chapter on Southern Leadership he remarks upon the real democracy of Southern society, and finds it more homogeneous and more gracious than that of the North. He notes also the existence of an easier relation between all members of the white race than is found in his own section (p. 62). In a discussion of Southern Temperament he speaks for a better understanding between the sections, and declares the North to be "weary of the negro question" and "less inclined than at any time during forty years to any active interference in Southern relations" (pp. 74 and 75). He finds an encouraging sign in the present "willingness of the South to discuss its problems on its own ground, and

to admit that there can be a variety of opinions and to meet rather than defy the criticisms of observers" (p. 78).

Eight chapters are devoted almost entirely to the negro, under the captions Negro Character, Negro Life, The Negro at Work, Is the Negro Rising? Race Association, Race Separation, Crime and its Penalties, and—Lynching. Some of the conclusions expressed in the hundred and twenty-odd pages embraced in these chapters are as follows: The migration of negroes to Northern states has not improved the conditions of those states; Northern negroes encounter many hardships; separate schools have been provided in some places in the North and are likely to increase; Northern negroes find many avenues of employment closed to them; few people like them as neighbors (pp. 99-100). "Race measured by race, the negro is inferior, and his past history in Africa and in America leads to the belief that he will remain inferior in race stamina and race achievement" (p. 105). "The numbers of the negroes are not in themselves alarming," and "hostility to the negro is not based on his numbers, but on the supposed inferiority of character" (pp. 113-114). "Domestic service is the most exasperating point of contact between the races," and "the great weight of testimony is that the colored man works tolerably well on the land" (pp. 124 and 127). The general conclusion of the author seems to be that economically the negro is rising, but is without the white man's spirit of acquisitiveness or his "willingness to sacrifice present delight for future good" (p. 148). The belief of the South that a mixture of the races now or hereafter would be calamitous "rests upon the conviction that the negro race, on the average, is below the white race; that it can never be expected to contribute anything like its proportion of the strength of the community; and hence to fuse the races means slight or no elevation for the negro, and a great decline for the white race. With that belief the writer coincides" (p. 158). "The whites are a unit on the two premises, that amalgamation must be resisted, and that the negro must not have political power" (p. 177). "The South thinks about the negro too much, talks about him too much, abuses him too much" (p. 178). "The white South is in control of the courts and of the administration of the law, and hence is responsible for certain reprehensible criminal practices and tendencies and for the disproportionate amount of crime in the South" (chap. xiv and xv).

These bare statements and detached quotations, submitted here without comment, are believed to present fairly the trend of the author's views, as set forth with considerable and painstaking detail. A few words seem in order touching his opinions on the Southern attitude

towards "social equality." Professor Hart does not attempt an analysis of this attitude, but contents himself with such observations as "the Southern mind somehow cannot distinguish between sitting at the same table with a man and making him your children's guardian" (p. 163). He calls the whole thing a mystery which "the Northern mind cannot penetrate" (p. 162). The use of the terms Northern mind and Southern mind in this connection are generalizations, of which in the main this volume is happily free. "The Southern mind" may balk at "social equality," but there are a hundred and one Southern ideas and definitions of the thing itself, and scores of varying points at which the line is drawn. It is hardly accurate to say the "the phrase social equality really means that if anything is done to raise the negro race it will demand to be raised all the way." "If the Southern mind" were to accept this as a fact it would likely mean short shrift of negro schools and of every other agency of racial uplift. Nor in truth is there really a "Northern mind" on the subject. This writer has listened to no more varied, no more pronounced, no more radical views on social equality anywhere than he has heard in New York, Philadelphia, Chicago, Boston, Providence, and a number of other eastern and western places.

Is not the real difficulty the fact that "social equality" everywhere is so intangible as to defy definition—so characterized by inextricable confusion of ideas and practices as to be impossible of reduction to logical terms? Like a great many other aspects of race relations, it is one more of feeling than of reasoned attitude. It sometimes happens that it is much easier for one who is guided by his instincts to get an insight into such matters than it is for one whose mental processes are those of the trained investigator of concrete facts. For example, Mr. Archer's book of course does not compare with Professor Hart's in the amount of study and preparation given to the subject. But Mr. Archer may easily get at the core of some things in the Southern racial situation which would be utterly incomprehensible to any man who depended solely upon his reasoning faculties for guiding him to the truth. Mr. Archer says, and I give his own italics: "What I *think* about the colour question must be superficial and may be foolish but there is a certain evidential value in what I *feel*. The whole question, ultimately is one of feeling: and the instinctive sensations of an observer, with the prejudices of his race, no doubt, but with no local Southern prejudices, are, so far as they go, worth taking into account" (*Through Afro-America*, p. 70). And here Mr. Archer uttered a fundamental truth. The keen insight into human nature which was an endowment of the gentle author of

The Essays of Elia enabled him to comprehend such things quite clearly. It was he who wrote, in a little essay on "Imperfect Sympathies," which should be absorbed by every would-be student of racial problems: "In the negro countenance you will often meet with strong traits of benignity. I have felt yearnings of sympathy towards some of these faces—or rather masks—that have looked out kindly upon one in casual encounters in the streets and highways. I love what Fuller beautifully calls 'these images of God cut in ebony.' But I should not like to associate with them, to share my meals and my good-nights with them—because they are black."

Professor Hart has two chapters under the titles Actual Wealth and Comparative Wealth, which appear to be mainly somewhat elaborate statistical arguments to establish the fact that the South is poorer than any other portion of the country of equal area. As replies to the harmless bombast of a certain class of Southern editors and "orators," they do well enough. But *cui bono*? The South has always been poorer than the North—at least within the memory of any man now living. And it is likely to so continue for an indefinite period of time. As to the reasons for this—that is another question, and one not answered in this volume and not attempted in this review.

Some interesting chapters on cotton, peonage and education bring us to one in which Southern problems are summarized and certain postulates stated. The problem, as the author sees it, seems to be that of maintaining peace and good will between two races, one of which is to dominate the relations and government of both, while the other is to accept what is given it. "To these conditions," he says, "discouraging, hard, implacable to innocent people, out of accord with the usual American principles, any effective remedy must nevertheless adjust itself" (p. 340). This acceptance of the inevitable on the part of one as genuinely interested in the welfare of the negro as is Professor Hart, is in itself a hopeful promise of future sectional accord in the matter of dealing with the negro and his problems. Had it been as clearly recognized forty years ago that any policy, national or state, which did not meet the sanction of at least a large section of Southern white people, was doomed to hopeless failure—conditions would today doubtless be better than they are. The "remedies" of deportation, terrorization, of gradual displacement, and of segregation, are disposed of as impossible. And in the following sentence the author places himself squarely against any form of federal intervention: "The writer is one of those who believe that any general federal legislation would revive friction between the

sections, would sharpen the race feeling in the South, and in the end would accomplish little for the negro; even federal aid to education could hardly be so managed as to keep up the feeling of white responsibility from which alone proper education of the negro can be expected" (p. 348). Truly this is progress—from the New England language and attitude of force-bill days.

Professor Hart, in conclusion, frankly admits that while both races are doing fairly well, "race relations are not improving" (p. 389). He urges education and patience. The suggestion is safe, and eminently sane. Education let us have, by all means—for both black and white, and to the utmost limit of each individual capacity to receive it, regardless of race or color. And we may all with profit pray for patience. But as to the efficacy of even these remedies, there comes the insistent query, what of race relations and negro conditions elsewhere? What has education done, and what is it doing, to improve the relations between whites and negroes, even where their contact is on such a Lilliputian scale as in Chicago, New York, Boston and Philadelphia? But still, let us have patience and let us educate—and leave the rest to Providence and time.

ALFRED HOLT STONE.

The Promise of American Life. BY HERBERT CROLY. (New York: The Macmillan Company, 1909. Pp. 468.)

The author regards a new nationalism as the promise of American life. In trying to tell what this is he has produced a singularly original and thoughtful work. Interesting in itself it is still more interesting as the mark of current tendencies of thought. The matter gives evidence that it owes little to knowledge of comparative politics but is the outcome of intelligent consideration of American politics. The quest for the promise of American life was apparently begun with traditional ideas, and the conclusions reached in favor of radical reform are the outcome of observation of the inadequacy of American institutions in their traditional form.

A series of chapters are devoted to an examination of the political ideas and methods of the early period of the republic. The author finds that there was very slight institutional expression of the democracy in the government, but there was a democratic situation because of fluid social and economic conditions. "The dominant note of the pioneer

period was an unformed national consistency reached by means of a natural community of feeling and a general similarity of occupation and well-being." In view of subsequent developments the author is unable to attribute democratic value to Jefferson's principle of minimum government, but finds it rather in Hamilton's principle of energy of administration. The author's analysis of the characteristics of the two statesmen is very striking, inasmuch as his judgment seems to stand in opposition to his sympathies. He likes Jefferson's democratic disposition, but yet he concludes that Hamilton and not Jefferson was the better artificer in framing institutions.

It is in such criticism that we may discern the author's own position. He is a constructive, national democrat. He views institutions as purely instrumental in their operation, and, ignoring traditional labels, he values them according to their democratic utility. In this way he reaches the conclusion that without greatly augmented administrative power and governmental activity, democracy is a sham under which the plutocrat and the oligarch will rule the country and exploit its resources for their class advantage.

Democratic interests are considered both as regards external and internal policy. The chapters on militarism and nationality reject as unsound the notion of an inherent conflict between imperial and democratic ideals. "Colonial expansion by modern national states is to be regarded, not as a cause of war, but as a safety-valve against war." A sensible national policy "commits the United States at least to the attempt to constitute in the two Americas a stable and peaceful international system." The author holds that since we will not allow European states to intervene in American states, we must make American states behave themselves so as not to offer just cause of intervention.

In dealing with problems of political reconstruction, it is contended that the organization of state authority "must be founded on a different relation between the executive and legislative branches and a wholly different conception of the function of a state legislative body." Executive authority should be concentrated in the office of the governor, who should fill administrative offices by appointment, and should also have "an express and effective control over legislation." He should have the power to introduce bills and put them to vote, and in case of rejection should have the right to appeal to the people. The author's analysis of the cause of political corruption is keen and penetrating. Bosses and machines exist "because of the prodigious amount of business entailed by the multiplicity of elective offices." "The simplest way to

dispense with the professional politician is to dispense with the service he performs. Reduce the number of elective officials." Reforms which merely alter the conditions under which power is gained possess no true remedial value. The system of direct primaries will fail to promote democratic control. "It may well be that this device will in the long run, merely emphasize the evil which it is intended to abate. It will tend to perpetuate the power of the professional politician by making his services still more necessary."

But whatever improvement may be made in state authority, the author does not think it can become the main agency of democratic government. "The control of the central government over commerce and the corporations should consequently be substituted for the control of the states rather than added thereto." Income and inheritance taxation should be exclusively a national function, but a certain proportion of the net receipts could be distributed among the states." The author argues that the curtailment of state function would invigorate it within the field left to it, although about the only sources of revenue that would be left to the state would be "the real estate tax and saloon licenses."

A sketch of the argument can not do justice to its sweep and cogency. Although in some respects the work leaves the impression that its philosophy has not been fully extracted, it is characterized by perception of political reality and practical knowledge of conditions. From the traditional American standpoint its views will appear extremely radical, not to say revolutionary, but a Swiss or an Australian or a New Zealand voter would hardly find them novel or at all startling. Herein lies the chief significance of the work. It is an indication that the democratic spirit in this country is beginning to work out of its old eddy to join the main current now flowing strong throughout the modern world.

HENRY JONES FORD.

The Transitional Period, 1788-1789, in the Government of the United States. By FRANK FLETCHER STEPHENS. (University of Missouri Studies, Vol. II, No. 4; 1909. Pp. viii, 126.)

The years 1788-1789, which Dr. Stephens has well termed the "Transitional Period," never have been adequately treated hitherto in standard historical and political works. These latter are occupied mainly with the story of the adoption of the Constitution by the several states

during 1787-1788, and the launching of the new government on March 4, 1789. The monograph now under consideration gives an intensive study of important events that transpired during this period, and treats of such topics as the process of electing United States senators, representatives and presidential electors, and the necessary adjustment of federal and state relations. It is based upon public documents, newspapers and correspondence and shows a careful and accurate handling of the material involved. Its content is, in brief, as follows:

The newly-adopted Constitution did not provide in detail the methods to be used in the choice of the members of the two houses of Congress, but allowed a wide latitude to the states for individual desire or interpretation. In many of the states the legislative bodies were in the habit of electing officials by a vote of the two houses in joint session. As a result of this custom most of the United States senators were elected by that method. Some people argued for an election by concurrent action of the two houses holding that the legislature must act as usual in law making, that is, the Senate and House should "act by and have a negative upon each other" (p. 25). Although the question was complicated in several instances by questions of local party politics, only three states adopted the concurrent method—New Hampshire, Massachusetts and New York. Pennsylvania and Georgia had only one house of legislature, hence the matter was a very simple one for them.

Four states (Pennsylvania, New Jersey, New Hampshire and Connecticut) elected their representatives by general ticket, and Maryland and Georgia added the further requirement that one representative should come from each of the prescribed districts. New York and South Carolina allowed the voters of each district to choose one representative, who might come from the state at large, while Massachusetts, Virginia and North Carolina adopted the district system as in use to-day. Delaware and Rhode Island had only one representative each who necessarily represented the entire state. A majority vote to elect was required in New Hampshire and Massachusetts.

As regards the choice of presidential electors, Dr. Stephens states that in "four states the choice was made entirely by the qualified voters, in three by the legislatures, in two by the voters indirectly, and in one by the governor and council" (p. 83). There were seventy-three electors chosen by the ten states that took part in the first election, and of these, seventy may be classed as friendly to the new Constitution. The three Anti-Federalists from Virginia of course voted for Washington for president, but cast their votes for George Clinton of New York for vice president.

Finally, three courses were open to the states in the adjustment of their relations with the national government. They might "take no action whatever . . . in which case their . . . laws would become obsolete through the precedence of the Federal Constitution and laws; they might omit [various laws] . . . in the re-codification of state laws or in the revised state constitutions, which omission would amount to a repeal; or they might specifically repeal parts or all of their . . . laws" (p. 98). Each course was followed by about an equal number of states.

WILLIAM STARR MYERS.

The Social Evil in New York City. A Study of Law Enforcement by the Research Committee of the Committee of Fourteen. (New York: Andrew H. Kellogg. Pp. xxxvi, 268.)

The Committee of Fourteen was organized in 1905 for the suppression of Raine's law hotels in the city of New York. The present investigation is directed to twenty-eight topics including prostitution in tenements, dance halls, the cadet system, seduction, immoral exhibitions, midwifery and abortion, employment agencies, etc. Its plan is to state (1) the provisions of law bearing on each topic; (2) the conditions preceding and leading up to the passage of these laws; (3) the degree to which they have been subsequently enforced, as shown by official records; (4) a field study of the effects following from the laws; (5) a summary of the influences, civic or political, tending to promote or defeat their success.

It is made clear that in addition to the relatively constant element of vice due to human frailty and imperfection of social development, there is a great amount of vice which is due to the active promotion of the business of prostitution. Many of the women who are in houses of prostitution are there because they have been forced, ensnared, or enticed by men who derive profit from their corruption. And many of the men who visit prostitutes do so because of insidious appeals to their lust, including active and extensive advertising and solicitation. The laws, for the most part, fail to reach the responsible partners in the business; and there are many who directly or indirectly derive profits from it.

Frequent additions are made to the long and heterogeneous list of enactments which quiet the public mind with the belief that protection has been afforded, when the lack of intelligence concerning related legis-

lation, the rulings of the courts, and numerous subterfuges, render such legislation comparatively futile.

The responsibility for the enforcement of the laws is divided between eight departments—three of the state and five of the city government—which for the most part act without any plan of coöperation. A permanent unsalaried commission appointed by the governor or mayor is necessary in order to exercise that vigilance which is the price of public safety and which must be not too inferior to the vigilance of the powers that prey, and which shall supply not only to legislators but to the public an adequate knowledge of conditions.

EDWARD C. HAYES.

Responsibility for Crime. By PHILIP A. PARSONS. (New York: Longmans, Green & Company. 1909. Pp. 194.)

Dr. Parsons has written an extremely readable study of crime and the criminal from the standpoint of Professor Giddings' explanation of society as "a product of like response to stimuli." So long as sociologists disagree in regard to the adequacy of this explanation, a work whose conclusions are based upon it is destined to meet with dissent in certain quarters. Moreover, as long as our statistical data in regard to crime remain so inadequate that we find great difficulty in answering the question whether crime has increased in the United States in the last decade or two, just so long will some of the important problems of penal science remain unsolved. Yet, despite these considerations, Dr. Parsons states with the utmost confidence propositions in regard to which, at the present stage of our knowledge, there may easily be a wide difference of opinion.

He emphatically denies the possibility of reforming the criminal and bids us to abandon the attempt. Instead he advocates the segregation and permanent detention of the culprit, the immediate withdrawal of all his rights and privileges as a citizen, and the devolution of his property to the next of kin (p. 154). In this plan no provision apparently is made for a difference in the treatment to be accorded to prisoners convicted of widely different offences. All sentences, at least, are for life.

The position which Dr. Parsons thus assumes rests upon the theory, which he fails to demonstrate, that hereditary influences are much more potent than environmental conditions in the production of the criminal. Until penologists have made greater use than they have

hitherto done of the results achieved in the field of genetic psychology and until a much larger number of well-selected concrete cases have been observed and tabulated, the question as to the relative influence of heredity and environment in producing the criminal will doubtless remain unsettled. In the meantime, therefore, a position definitely based on either view of the matter is manifestly hazardous. If an opinion confessedly subject to correction may be ventured, we are inclined to the belief that Dr. Parsons has greatly underrated the importance of environment. We readily admit that crime is to be explained as the natural result of social and physical causes, and that there are persons who come into the world possessing tendencies which render them especially susceptible to those stimuli which lead to the commission of crime. But this position is not inconsistent with the belief that if organized society replaces such stimuli with more wholesome ones at a sufficiently early stage in the career of the criminal, a reformation can in most cases be accomplished. At all events it would seem to be better to demonstrate that reformation is an impracticable dream before embracing the fatalistic doctrine or adopting the anti-individualistic plan which Dr. Parsons advocates.

J. M. MATHEWS.

A History of the Irish Parliamentary Party. By F. HUGH O'DONNELL. (London: Longmans, Green and Company, 1910. 2 volumes. Pp. xiii, 508, and viii, 494.)

These two bulky volumes constitute a merciless arraignment of the Irish Parliamentary Party by one who was closely connected with Irish affairs during the period in question. The writer says in his preface: "From the very first intimately associated with, or advantageously placed to observe, all the most important leaders and leading adherents of the parties and movements between 1870 and 1895 in particular; long resident in the great capitals of Europe and acquainted with their politicians and diplomatists; I had opportunities of exact information, which have never been enjoyed by any previous writer on recent Irish affairs." The author writes "as a Nationalist who maintains the whole of the rights" of his country, but who "equally recognises that Englishmen are patriots."

Mr. O'Donnell is apparently quite out of tune with most of the men who dominated Irish affairs from 1870 to 1890. He finds little comfort

in the "tragic comedy of Irish politics." Mr. Isaac Butt is referred to fondly as "the great and kindly Irishman who founded the Home Rule movement," but Michael Davitt is the "popular incendiary;" Charles Stewart Parnell was "a first class parrot" who lacked the essential elements of a wise and wholesome leader. He undermined and disturbed, but did not construct. The author also speaks disparagingly of the "Gladstone and Parnell Co.," and comments upon the "Parnellisation of Gladstone." Of the latter he says: "The great name of Mr. Gladstone will continue to be indelibly attached to the evolution of the Parliamentary party from Ireland, as it is attached to the rise and culmination of the agrarian revolution itself. Mr. Gladstone is the one English type who reproduced most nearly the characteristic qualities of the Irish agitator. He came from Oxford and not from the Four Courts. He took himself infinitely more seriously than is customary or possible in Ireland. He had the prestige of the highest position to protect him from the fitful vicissitudes of popularity. But he was an agitator, if also hierophant. He was his own prophet, too, and no matter what were his other variations of conviction, he never doubted that he was the true one." (II, 468.)

Mr. O'Donnell frequently expresses his contempt for Patrick Ford and the *Irish World* and deplores the influence of Tammany upon ignorant members of his race in America. He speaks frequently of "the curse of the American dollar," and contends that the influence of American money upon Irish elections and politics has been pernicious. He comments upon an American tour for money collecting as follows: "With regard to the transoceanic department of the financial system of the League, the recent tour of Mr. T. P. O'Connor, following on the tracks of so many preceding tours, is sufficient illustration of this part of the business. There are three requisites for a successful tour of this description in America, which may be summarily stated as follows:—

- "1. A good platform orator.
- "2. Some British institution to annihilate.
- "3. The solemn assurance that Home Rule is in sight, and that the performance is just about to begin."

"I need not say that Mr. T. P. O'Connor is a platform orator of the best: rotund, indignant, persuasive, denunciatory, encouraging. As for the British institution to be destroyed, we know that now it is the House of Lords. Mr. T. P. O'Connor was able to assure American audiences that the House of Lords concentrated in itself the worst venom of the British Empire, that its abolition meant untold benefit to the

world in general and to Ireland in particular, and that every man who had a grudge against the British Empire was consequently bound to annihilate the House of Lords. These engaging themes were illustrated by Mr. O'Connor with a profuse variety of his most characteristic eloquence." (II, 386.)

The work as a whole is controversial rather than impartial, but Mr. O'Donnell presents a strong case. He is a fearless and courageous pleader and a most lucid expositor. His book is interesting and readable from the first line to the last. The style is engaging and incisive and at times is enlivened by a subtle wit. Quotations from speeches, letters, and other documents, scattered throughout the volumes constitute a valuable feature of the work. While Mr. O'Donnell has probably not spoken the final word on the much discussed "Irish Problem," the future historian of this interesting movement will consult his volumes with profit.

T. F. MORAN.

A Century of Empire. BY SIR HERBERT MAXWELL. Volume ii, (1833-1868), pp. xiii 364. Octavo. Longmans. 1910.

The first of the three volumes of this work was reviewed in an earlier number of the *Review* and the second volume is now before us. Its characteristics are much the same as the earlier volume. There is the same vivacity of style, the same frank identification of the writer with the conservatives, the same controversy with Sir Spencer Walpole, the same emphasis on political and military features of history, the same reference to contemporary conditions. In the early part of the volume, the Duke of Wellington is the hero still, while Brougham arouses the author's detestation and Russell his dislike. Palmerston is treated generously. Disraeli and Gladstone are mistrusted. The portraits of prominent characters continue to constitute an interesting feature of the book, though one is inclined to ask why a likeness of General John Nicholson is one of the seven shown us. Maxwell is frankly insular in his sources of information. He may occasionally quote a French authority, but never one in any other language and, among his English sources, he goes but seldom to public documents. Good use is made of the Duke of Wellington's papers and of Queen Victoria's letters and the important influence of Prince Albert is fully realized. The development of Australia and New Zealand is overlooked. A good and

adequate account is given of the growth of the Indian empire. The term United States does not occur in the index, but the account of the relations of Great Britain and the American government during the Civil War is full—accurate, and remarkably unprejudiced. The importance is clearly shown of Prince Albert's "prudent counsel" and of Lord Lyons "tactful serenity" in preserving friendliness between the two countries at the time of the Trent episode. There is a remarkable willingness to admit that the English government was not always right in its foreign relations and the annexations of territory in India sometimes meets censure, as made on too slight grounds. In our brief space, we may only touch on some other features of the book, such as the succinct and clear account of the two great religious events of the middle of the century; the Oxford movement and the Scottish disruption, or, in another field, of the Crimean War. The story of the Canadian troubles in the thirties is well told. Epigram sometimes appears, as when we are told that "Littleton was disposed of by that expedient so dear to embarrassed premiers—a peerage." We may doubt whether the conservative party began as early as Maxwell thinks to assume a favorable attitude toward rational reforms and whether that attitude has been maintained as consistently as the work asserts. A curious sentence on page 104 speaks of "Christians being prone to forget the charter and shibboleth bequeathed to them by their Founder," but such infelicities are rarely found. The concluding volume will be awaited with pleasant expectation and the work may be recommended as giving a good birdseye view of English history in the nineteenth century.

The Essentials of Self-Government. By ELLIS T. POWELL. (London: Longmans, Green and Company, 1909. Pp. vii, 309.)

The purpose of this elaborate essay is to study the mechanism of Parliamentary elections and to suggest improvements in its present condition. It is the belief of the author that the electoral mechanism is a potent factor in self-government and that its efficiency may be greatly increased by certain practical modifications. He discusses such subjects as registration of voters, distribution of seats, candidates and candidatures, election agents, election expenses, corrupt practices, illegal practices, the act and mode of voting, election petitions, and the dismissal of members, and shows in detail how the procedure or the machinery in each case might be improved. For example, he would place

the registration work in each constituency "in charge of a specially-appointed skilled official, devoting his whole time to the work;" he would have the distribution of seats in the House of Commons more frequently and more scientifically adjusted; he would limit candidature to a fixed period, and would include in the return of election expenses all expenses incurred in "nursing" a constituency; he would pay members of the House of Commons and would "banish the old and pernicious tradition of lavish election expenditure;" he would "restrict the bill-posting, both in character and amount" and would prohibit the employment of "sandwichmen;" he would have the expenses of newspapers, owned or controlled by candidates, fall into the statutory aggregate and be included in the return of expenses; he would have all elections held on the same day, would keep the polls open for a longer time, would prohibit the "besetting" of the voter, and would have all public-houses closed on election day; he would also "ennoble the act of voting" and would render the aspect of the polling booth "more inspiring by portraits of the great leaders of the race and by pictures of the great constitutional episodes."

While some of the suggestions appear to be too theoretical and complicated to be workable, many of them seem both practicable and advisable. Only the natural conservatism of the English people will stand in the way of their adoption.

The author has expended a prodigious amount of labor upon his book and students of the British political system will refer to it with profit.

T. F. MORAN.

The Condition of England. By C. F. G. MASTERMAN. (London: Methuen and Company, 1909. Pp. xi, 309.)

In ten well written and incisive chapters the author has attempted an analysis of present conditions in England from the social, economic, scientific, literary, and religious standpoints. Although not pessimistic, the study represents affairs in England as being in a serious and not altogether hopeful condition. The diagnosis, in the main, coincides with that reached by Price Collier in his "England and the English."

Mr. Masterman's delineation of economic conditions may be best given in his own words. "Such appear some, at least," he says, "of the characteristics of the various classes of society to-day in England. In general material condition there is little to excite foreboding. A

proportion of the population is raised well above the privations of poverty larger than ever before in history. Extravagance and a longing for pleasure and excitement are common to all classes. The aggregation of plenty is such as the Old World has never before seen. The vision, as a whole, is of a laborious energetic race, deserting the countryside for the cities, and there heaping up wealth, which is shared, in some degree, by all but the poorest. If anything is wrong in material conditions it is in the apparatus, not of accumulation, but of distribution. An altogether inadequate proportion of this accumulation is the absolute possession of a tiny class which sits secure upon the summit." (Page 209.)

The author is not sure that the progress due to science and invention is an unmixed blessing. "It is making life noisier: is it making life—to the general—a richer, a better thing: existence more worth the living?" (Page 215.)

In his chapter on "Religion and Progress," Mr. Masterman expresses himself succinctly as follows: "Here is the kernel of the whole matter. Ethical advance is accompanied (as it seems) by spiritual decline." (Page 274.)

In his "Postscript" the author candidly admits that he is unable to interpret with any degree of confidence the general phenomena presented by English conditions. "So at the end," he says, "we are compelled to confess an essential ignorance. . . . We are uncertain whether civilization is about to blossom into flower, or wither in tangle of dead leaves and faded gold." (Page 304.) Nevertheless, the book is brilliantly written, exceedingly suggestive and stimulating, and interesting from the speculative standpoint. The author has read widely and quotes aptly and was well prepared for his task by his varied experience as journalist, author, and philanthropic worker.

T. F. MORAN.

The Hague Peace Conferences and Other International Conferences Concerning the Laws and Usages of War: Texts of Conventions, with Commentaries. By A. PEARCE HIGGINS. (Cambridge: University Press, 1909. Pp. xiv, 632.)

The character of this work may perhaps best be seen by a comparison with the like work of Mr. James B. Scott. Mr. Scott's evident purpose was to do for the two Peace Conferences and especially the second Conference what Frederick W. Holls had done for the first. Both had a special interest in arbitration and both had been members

of United States delegations. They desired to give to the world at large an idea of what the Conferences were like and what they had accomplished. Their works were not technical. They were addressed primarily not to international lawyers but to the general public. Mr. Higgins' work, on the other hand, is intended primarily for the student of international law. And while Mr. Holls and Mr. Scott were chiefly interested in the means of preventing war, Mr. Higgins' chief interest lies in the laws of war themselves.

Of especial help to the student of international law will be the arrangement Mr. Higgins has made of the texts of the various Conventions. On one page he gives the corresponding provisions of the French texts of the conventions of 1899 and 1907 in parallel columns and indicates the changes made by the latter by italics, and on the opposite page makes a similar arrangement of the English translations. It is possible to see at a glance the changes made in 1907 and to compare the English translation with the original text. Furthermore, he gives a detailed and accurate history of the various changes in committee and conference and so gives us such enlightenment as the history of the changes affords. It is not the purpose of the author to cover the field already occupied by more general works such as those of Westlake and Holland, but rather to supplement them by a more complete and detailed presentation of the work of the Conferences. And yet, although the author does not go into any general exposition of the laws of war, he frequently discusses provisions in the light of the general law.

The discussion of Article 23 (h) of the Regulations respecting the Laws and Customs of War on Land is particularly interesting. The first part of that paragraph states that "it is especially forbidden to declare extinguished, suspended or unenforceable in a court of law the rights and rights of action of the nationals of the adverse party." This provision was introduced by the German delegate who "explained that the proposal was intended not to confine the inviolability of enemy property, to corporeal property and that it had in view the whole domain of obligations by prohibiting all legislative measures which, in time of war, would place the subject of an enemy state in a position of being unable to prosecute the execution of a contract before the courts of the adverse party." This explanation would mean the end of the old common law doctrine that an alien enemy has no standing in court, and so the attempt has been made to give the paragraph a narrower interpretation. It has been explained as referring to the conduct of commanders in occupied territory but it has little meaning if such be

the case, and, as Professor Holland says, would need careful re-drafting. As the explanation of the German delegate seems to have been the only one advanced at the Conference, it would seem either that the paragraph was overlooked by the British and American delegates or that they felt no particular attachment to the rule denying an alien enemy standing in court. American courts have never looked with favor on that rule, and, it would seem, would incline to favor the German explanation.

The bulk of Mr. Higgins' work, like that of Mr. Scott, is made up of the texts of the various conventions. Mr. Higgins has taken pains to include all the important conventions and declarations bearing on the laws of war such as the Geneva Conventions and the Brussels Declaration, while Mr. Scott has included the diplomatic correspondence leading up to the two Conferences and various proposals with regard to arbitration. The later publication of Mr. Higgins' work enabled him to include also the Final Protocol of the London Naval Conference, the Declaration of London and the General Report to the Naval Conference of the Drafting Committee.

The author has succeeded in getting out an accurate, scholarly work which will be of great help to the international lawyer and especially to the student of the laws of war.

PERCY BORDWELL.

La Teoria dei Are Pateri nel Diritto Costituzionale del Nord-America. By G. B. KLEIN. (Florence, 1909.)

In this treatise the author presents the first volume of an elaborate study of the separation of governmental powers in American Constitutional law. In an introductory chapter he traces the sources of the theory of separation from Aristotle and the Roman writers down through later thinkers, especially Locke, to Montesquieu. Then follows a more particular examination of the sources, both idealogical and positive, of the federal constitution of 1787 together with some account of the mediate and immediate preliminary movements leading up to the adoption of that instrument. The author enters into a lengthy discussion of the conception of individual liberty as found not only in the federal constitution but also in the New England colonies and in the first constitutions of the North American states. He also examines the judicial value of the term "people" as found in the federal constitution. The

work is expanded to somewhat excessive length owing to the necessity under which the author labors of explaining many matters in detail which would be too obvious or too familiar to require such treatment in a work addressed solely to American readers.

The volume deals not only with the legal aspects of the doctrine of separation of powers but also treats of the influence brought to bear upon governmental practice by such political questions as those of the federal financial régime and slavery, from the two respective compromises of 1833 and 1820 down to 1860. The primary object, however, which the author has in view in this volume is the presentation of the legal application of the theory of the separation of powers as actually found in the constitutional documents of the federal and state governments, together with a critical résumé of the commentaries upon the theory found in the writings of such American political thinkers as Calhoun and Webster. The work gives evidence of an amount of research which is distinctly creditable to one working at a distance from some of the more important sources of information.

In the subsequent volume which the author promises to issue, the political side of the question will be more fully dealt with, and particular attention will be given to the influence of politics upon the enlargement and restriction of the three powers in such cases as are left doubtful or omitted entirely in the original Constitution.

J. M. MATHEWS.

Zur Entwicklungsgeschichte des Sozialismus. By DR. OTTO WARSCHAUER. (Berlin: 1909. xvi-402.)

This admirable book is designed to be part of a larger study of Socialism and Communism in the nineteenth century, and is based upon lectures delivered some years ago in the university of Leipzig.

The author holds that, no matter what views one may entertain as to Socialism, the history of its development properly belongs to the general history of culture and as an integral part of it possesses a permanent significance. He warns the reader against confounding Socialism with Communism. It is true that both spring from an individual dissatisfaction with present social conditions, that both attempt to outline a new political order, that both strive to banish material poverty and that both seek the causes of the present disjointed situation not in human character but in peculiar economic and political arrangements.

But there are wide divergences between Socialism and Communism. Socialism aims at a community of the means of production. Communism seeks a community of the means of enjoyment as well. Socialism preserves the right to personality. Communism treats everybody as alike in capacities and rights, and would blot out all political and social distinctions introducing a pure equality. Socialism insists on the right of every one to produce economic goods, to that end asks the state to furnish gratis the means of production, and endeavors to secure for every one the right to the full return of his labor. Communism, on the contrary, regards the state alone as entitled to both the production and the distribution of goods, and demands for every one that the state furnish equally means of subsistence and of education. It guarantees to every person the right to the enjoyment of life, but it lays upon him also the duty of rendering service. So Communism stands for state production, for the abolition of private property, and the introduction of a community of goods.

Modern Socialism came into being with the ideas that resulted in the French Revolution. It occurred to the mind of the multitude that political equality and the complete freedom of the person needed for their perfection a change in the matter of ownership, of possession. At the same time there arose in most of the European countries, a mighty industrial movement. Capital became mobile, great individual properties rapidly arose, and the contrast between poverty and riches became more accentuated. There were developed, in the intensified dissatisfaction, jealous views respecting the widely differing values placed upon human labor. Then came the desire for a generalized means of production, and from this desire Socialism was born.

Once born, Socialism sought a scientific basis. It found it in Adam Smith's *Wealth of Nations*. Smith had asserted; and no one had contradicted him that labor is the source of all value. Grant this and it follows as a logical corollary that the financial product of labor belongs to the labor that produced it, and not, as heretofore, to the few "undertakers" as profits. Smith, indeed, never advanced any such idea, but in the thought suggested by him Socialism found a scientific foundation on which to base its economic theory.

Not in the land of Adam Smith, but in France, did Socialism come into being. The first to seize upon the idea that labor is the source of all value and to make it the corner stone of a philosophy of life was Saint-Simon, who looked upon himself as an inspired prophet of a divine revelation, which was to become the saving faith of men. "With the magic

wand of religion he smote the minds of men, but the springs of their judgment did not open." His life was a series of abortive efforts. He was the product of peculiar antitheses. In him an unbridled phantasy was joined to a fierce hunger of knowledge and a rich mentality was coupled with a feverish enthusiasm. His writings revolve constantly about a single thought,—the removal of the nobility and the clergy from their supposedly usurped position of power in the state and society, and the transfer of the government to those who, by reason of their labor and their knowledge, would advance human morals. Saint-Simon was the first Christian Socialist of modern times.

With Saint-Simon must be joined the name of Charles Fourier. All his life long compelled to follow, in a subordinate capacity, mercantile pursuits, Fourier nevertheless constantly opposed trade and steadily complained of his fate. He would be the founder of a new sociology, a sort of social Columbus, discovering a new world. He believed that a new social order could be established, in which the interests of the individual could be made to coincide with the interests of all. He held that value should be based upon capacity to contribute to the general welfare, and that no one, impelled by the instinct of self-preservation should exploit or injure another. Transferring Newton's law of attraction to the economic world, he deduced therefrom a theory of social organization, a species of Socialistic summer night's dream.

While Fourier derived his Socialism from the satisfaction of individual impulses, Louis Blanc, on the other hand, introduced the idea of the state. He made the capitalistic method of production the center of his attack, and in his effort to trace back the causal relations of historic events to economic determinants he may be regarded as the predecessor of Karl Marx.

It is to the treatment of these three schools of socialistic thought that Professor Warschauer devoted himself, developing the manifold divergences and the manifold points of contact which they present. The material is set forth in no partisan spirit, but in a clear, interesting and scientific treatment the volume aims at being a contribution to the history of civilization. The book is exceedingly readable, with a style especially pleasing to one who has been accustomed to the dusty pages of most German writers.

B. E. H.

The Constitution of the Commonwealth of Australia. Second Edition. By W. HARRISON MOORE. (Melbourne: Charles F. Maxwell. London: Sweet and Maxwell. Pp. xxviii, 789. 1910.)

This standard work, the second edition of which has recently appeared, furnishes, in the reviewer's judgment, the best judicial commentary upon the constitutional law of the Australian Commonwealth that we possess. Sound and comprehensive legal knowledge, a logical arrangement of material and clearness of statement characterize the work.

Being almost wholly juristic in character the work will not, and is not intended to, occupy the field covered by the encyclopaedic treatise of Quick and Garran, published in 1901, in which, as is well known, the act of 1900 is taken up clause by clause, in, in some cases, word by word and annotated with historical and comparative comments. Professor Moore discusses the constitutional provisions in the light of the judicial interpretations they have received, the exhaustive examination of English and Australian cases being supplemented by numerous references to the adjudications of our own Supreme Court. In some instances these are not the very best that might have been selected, and occasionally an error is found, as, for example, where in reliance upon a statement in *Marbury v. Madison*, it is declared that our inferior federal courts may not be granted original jurisdiction over classes of cases embraced within the constitutionally determined sphere of original jurisdiction of the Supreme Court. But in general the author displays an excellent knowledge and appreciation of American public law.

After a brief but excellent historical introduction, successive chapters deal with the general nature of the federal union, the distribution of powers, the organization and powers of the Commonwealth government, the status of the States, their control by the central authority, and the supremacy of commonwealth law. Under the "Finance and Trade," the federal powers with reference to taxation, appropriations, commerce, interstate trade and state railways are discussed in detail. In an appendix are given the texts of important documents, including of course, that of the act of 1900. There is an excellent index.

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